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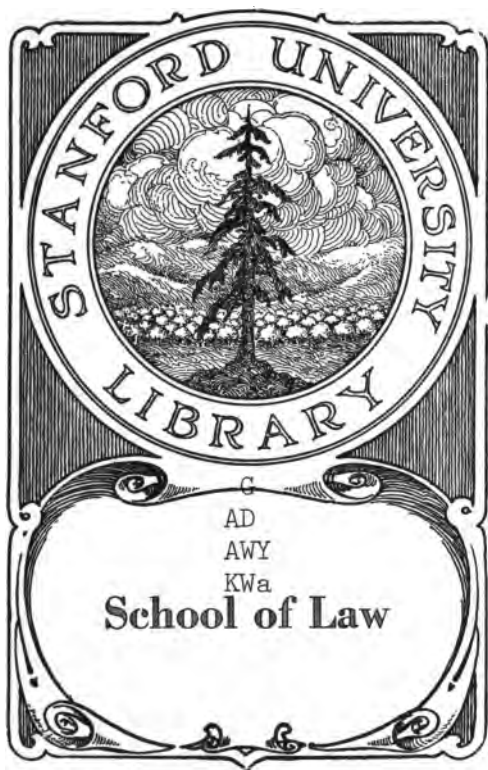
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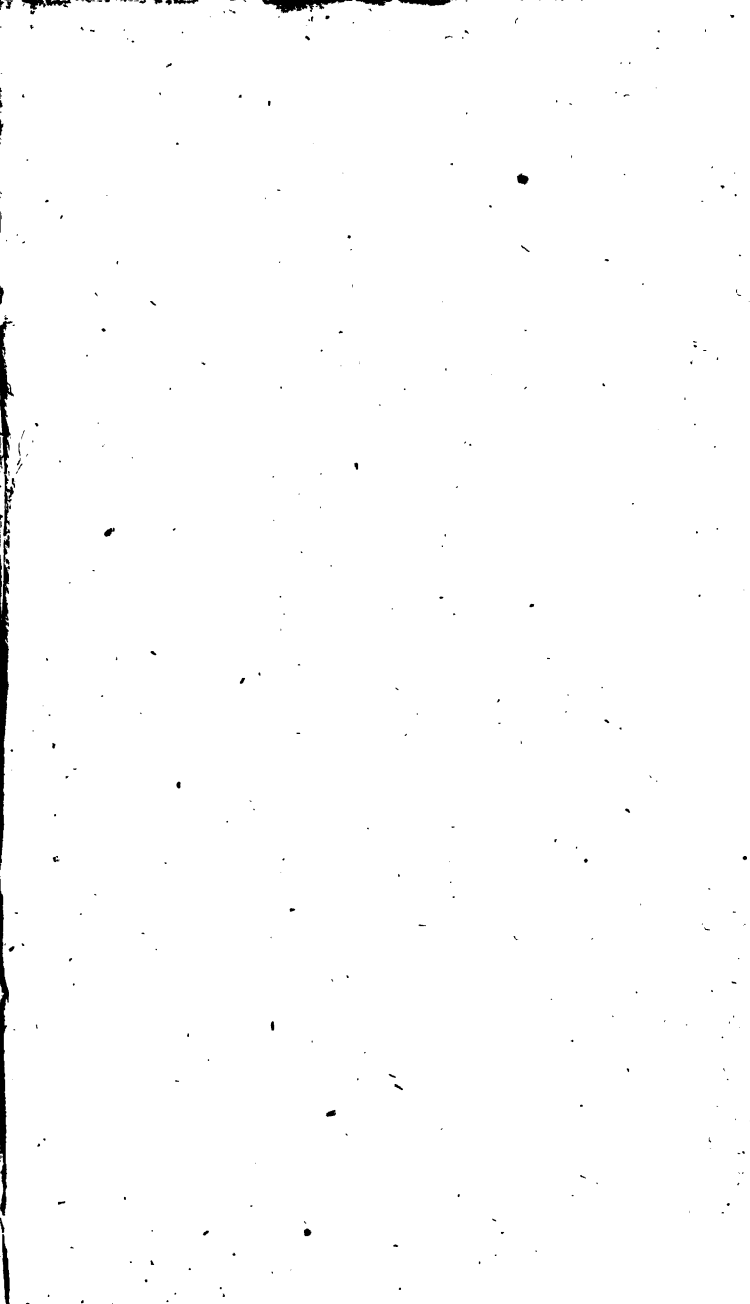
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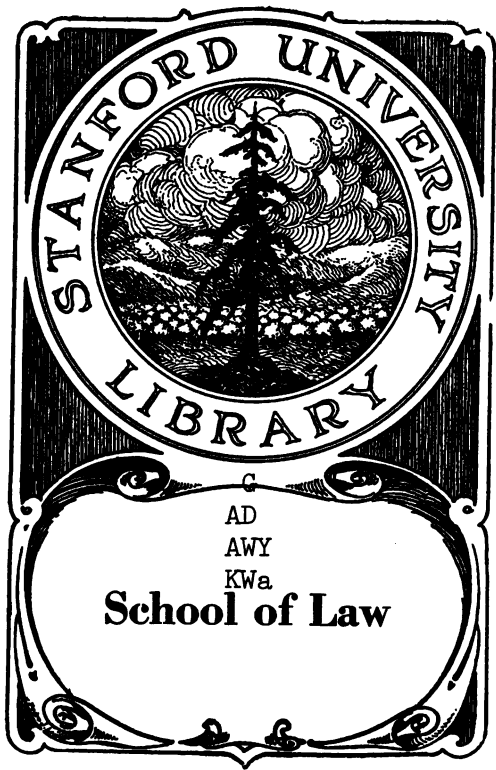
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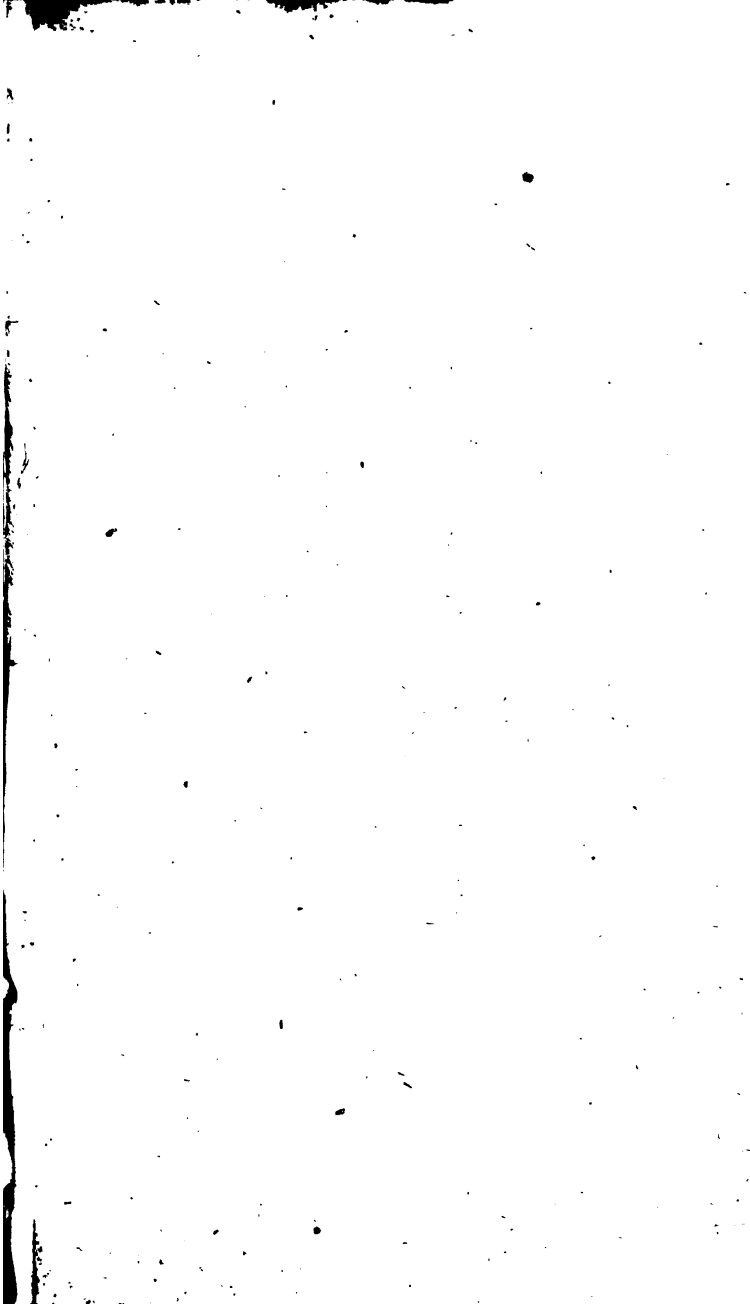


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Nright, William

**ADVICE**

**ON THE**

**STUDY OF THE LAW,**

**WITH**

**DIRECTIONS FOR THE CHOICE OF BOOKS,**

**AND ADDITIONAL NOTES**

**FOR THE AMERICAN STUDENT.**

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Read not to contradict and confute, nor to believe and take  
for granted, nor to find talk and discourse, but to weigh  
and consider.

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BACON.

Baltimore:

**PUBLISHED BY EDWARD J. COALE.**

.....

1811.

DISTRICT OF MARYLAND, TO WIT :

BE IT REMEMBERED, That on this twentieth day of May, in the thirty-fifth year of the independence of the United States of America, EDWARD J. COALE, of the said district, hath deposited in this office the title of a book, the right whereof he claims as proprietor, in the words and figures following, viz.

“ Advice on the Study of the Law, with Directions for the Choice of Books, and additional Notes for the American Student.”

“ Read not to contradict and confute, nor to believe and take for granted, nor to find talk and discourse, but to weigh and consider.”

BACON.”

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PHILIP MOORE,  
*Clk. of Dis't of Maryland*



## PREFACE.

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THE Author of the suggestions contained in the following sheets, relies with confidence on the candour of the reader, for all reasonable indulgence in this his humble endeavour to render himself serviceable, as a friendly monitor to young articled Clerks in the profession of the Law. He solicits correction under errors; he feels how highly he may improve under just criticism; and he will receive it with gratitude: but he must stand excused, if he should prove regardless of the censure of those men who reject a book as useless, without giving themselves the trouble to examine it, or to search into the motives.

of the heart which dictated the honest and well-meant instructions it may contain.

Fulbeck,\* Dodridge†, and Philip‡, among the old lawyers, and Simpson§ and Bridgman in our own time, have written on the study of the law; but their works are addressed to the Gentlemen of the Bar, and contain no practical hints for the use of Attornies' Clerks. To these may be added two anonymous publications: *The Barrister*, in two volumes, 12mo. and *Letters on the Study and Practice of the Law*. These Letters are well written, but they are also addressed to Barristers, and do not contain any information on the choice of books. There are some obser-

\* 1620.

† 1631.

‡ 1667.

§ Mr. Simpson's book was first published in 1764, and was reprinted by Mr. Dawes, with Notes, in 1795. Mr. Bridgman's book, published in 1804, contains only one hundred and forty-three pages, of which more than thirty are quotations from Blackstone's Chapter on the Study of the Law, and from Simpson's Reflections.

vations on the study of the law in Sir Matthew Hale's Preface to Rolle's Abridgment: two Letters on the same subject were written by Chief Justice Reeve\*, and by Lord Ashburton†: and Mr. Watkins, in his *Principles*, and Mr. Burton, in his *Elements* of Conveyancing, have given their sentiments on the choice of books connected with the study of that part of our jurisprudence. But, whether these labours have superseded the necessity of further advice, more immediately applicable to Attornies' Clerks, may be ascertained by an impartial attention to the following pages.

The author hopes to meet with that candour from the gentlemen of the profession, who have the honour of it at heart, which, were he better qualified, he should

\* *Collectanea Juridica*, I. 79. † Knox's *Elegant Epistles*.

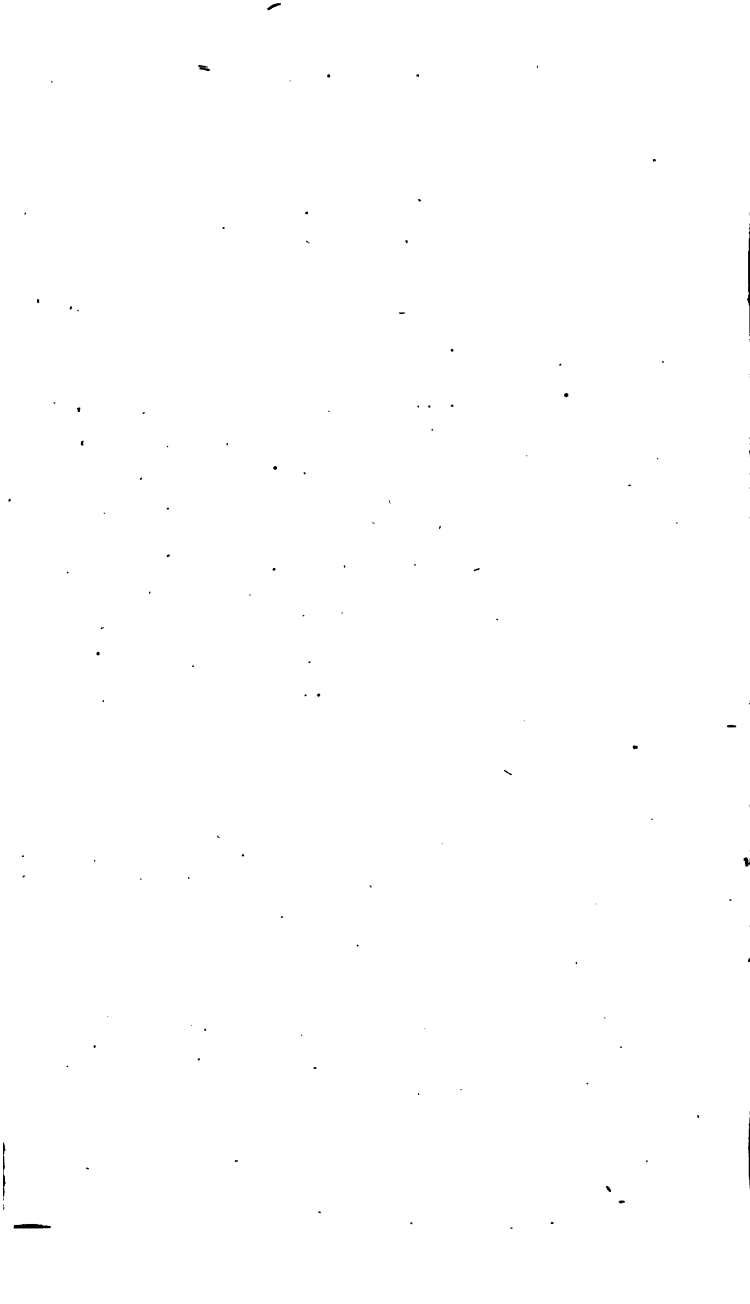
be ever ready to show to the work of any other man, whose good intention was manifest, although his mental and scholastic powers might not be competent to perfect the end proposed. He will be proud to receive the communications (addressed to his Publishers) of intelligent and experienced men, who will confer a great obligation upon him by such remarks as may tend to render a future edition (if required) of more utility than the present.

The size and price, and other particulars, of the books recommended in the following pages, have been generally omitted; but information on these points may be found in a Catalogue of Law Books, lately published by Mr. Reed.

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# ADVICE

## ON THE

### STUDY OF THE LAW.

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#### INTRODUCTION.

MANY sensible men have lamented the disadvantages under which an attorney's clerk enters upon the study of the law. No books have been written for his use. He is taught by form or precedent, rather than by principle. He is made to copy precedents, without knowing either their application or those rules on which they are grounded. When he begins to prepare draughts, he is led to expect all his information from these forms; and his knowledge is in the end as limited as the means by which he has been instructed\*."

\* Preston on Conveyancing, Pref. ix.

There will be ignorant and illiberal practitioners as long as there are men among us who spend their youth in idleness or trifling amusements, instead of industriously studying those books, from which only a knowledge of the principles of jurisprudence is to be obtained. An attorney of this description will be justly despised by every man with whom he is concerned; and from his conduct, unfortunately, many will be so uncandid as to form their opinion of his more honourable contemporaries. The profession of the law was for many years so degraded by illiterate and dishonest attorneys, that to correct the abuses introduced by those men, the interference of the legislature was deemed requisite: and it has been obtained. Society will rejoice, that an act of parliament has passed, relative to attorneys' clerks, which is likely to produce effects extremely beneficial to this country.

The profession will become more respectable, if the attorneys become more learned; and it is the duty of every member to raise it in the estimation of mankind. The great inconvenience



and loss, which many families have to lament from the ignorance of attorneys, is alone a sufficient cause that some attempt should be made to diffuse useful and elementary, as well as practical knowledge, among those who are at this time in their clerkship.

The student should commence with a firm resolution to become one of the most eminent attorneys of the age : and though the difficulties which he will at first meet with may be great, he should not despond ; because despondency will produce negligence. Let him persevere, and he will succeed.

It has been of late too much the practice of authors, to represent the subject of their works as easy to be understood by the meanest capacities. I am not addressing myself to *wilfully* mean capacities. I will not plunge the student into a labyrinth of difficulties, perplexing to the mind, and injurious to his progress, by falsely exciting the expectation of acquiring useful law learning with little difficulty. If any youth takes my book into his hand, who will not strive to

fix his attention, and renounce such unnecessary pleasures as tend to dissipate thought, let him abandon the idea of entering into the profession : he will be an unworthy member.

I shall here caution the student against adopting the too prevalent opinion, that men of great talents are incapable of much application. The idle are always willing to give it credit, but be assured it is absurd and false. Reflect on the attainments of Sir Isaac Newton, Lord Hale, Lord Hardwicke, and others of your countrymen, whose learning placed them among the brightest ornaments of mankind, and you will disregard the fallacious reasoning of those who attempt to support an opinion so erroneous. Of equally pernicious tendency, and equally false, is the supposition that a libertine is necessarily a man of understanding. It is disgraceful to young men either to be, or to affect to be, such characters. The passions implanted in us for wise purposes, by the Supreme Being, are often too strong to be restrained by our reason, and need not be stimulated by the foolish belief that the

indulgence of them indicates the possession of more valuable endowments. He who believes, or wishes others to believe, that gay or licentious conduct bespeaks a vigorous mind, deceives himself, and injures society. It is indeed absurd, to estimate talents by morals or manners.

A student should guard himself against the fear of being reproached with singularity. If he is diligent, he must expect some silly witticisms to be directed at his conduct by his less industrious acquaintance, with the hope of disturbing his quiet; but he must resolve not to let them frighten or seduce him from a well-determined purpose. This is a rock on which hundreds have been shipwrecked. Let him display a mind too great, and a resolution too strong to be shaken by trifles. Must the thoughtful and the thoughtless, the ignorant and the wise, necessarily differ in *mind* only? The eccentricities of literary men, which so frequently produce to the unreflecting, an opportunity of displaying their talent for ridicule, are seldom of consequence to society. Surely, as the late Gilbert Wakefield was wont

to say, *immorality excepted, nothing is disgraceful here*. Eccentricity, licentiousness, or prudence, have no relation to intellect: profligates and saints are alike indebted to nature and to study for their literary and scientific knowledge. With the hope that what I have advanced on this subject will have its desired effect, I shall pursue my observations.

To gain a knowledge of the law, much time and studious attention are necessary. Let the young clerk remember, that honourable distinction cannot be otherwise acquired; and that his success depends upon his own exertions. If he is industrious, he will be learned. If he is virtuous, he will be happy. Biography will teach him, that many, with perhaps more disadvantages than he has to encounter, have attained the highest eminence. Saunders was a beggar boy, taught to write by attornies' clerks in the Temple, and, after serving a clerkship, and practising with success at the bar, he was made Chief Justice, and has left behind him the best reports extant. Of this venerable judge it was thus observed by Jus-

tice Willes : “ he was so very learned a man, and so well skilled in pleading, that no authorities were necessary to be mentioned after him.” Sir John Strange, Lord Hardwicke\*, and Lord Kenyon, arrived at the highest judicial situations in this kingdom, though accustomed in their youth to the labour of copying in an attorney’s office. One of the judges, who now presides in our courts of justice, practised as an attorney in Yorkshire. Bishop Warburton, Mr. Roscoe, Mr. Garrow, and Mr. Preston, were attorneys’ clerks. These examples, and others which might be produced, should animate every young man in the pursuit of knowledge. Let him resolve to imitate, and if possible, to excel them. He should beware of being deceived by a vanity which may prompt him to believe that he is capable of becoming a good lawyer, without *great* application ; but he should not doubt that his ge-

\* Lord Mansfield entertained so high an opinion of this great man, that he often observed, “ When Lord Hardwicke pronounced his decrees, wisdom herself might be said to speak.”—(*Butler’s Hore Jur.*)

nus and memory are adequate, if properly directed, to the attainment of the highest rank in his profession.

Genius is more equally distributed among mankind than is generally allowed.

Falsa enim est querela, paucissimis hominibus vim percipiendi, quæ tradantur, esse concessam, plerosque vero laborem ac tempora tarditate ingenii perdere. Nam contra, plures reperias et faciles in excogitando, et ad discendum promptos; quippe id est homini naturale; ac sicut aves a volatum, equi ad cursum, ad sævitiam feræ gignuntur; ita nobis propria est mentis agitatio, atque solertia: unde origo animi cœlestis creditur. Hebetes vero et indociles non magis secundum naturam homines eduntur, quam prodigiosa corpora, et monstris insignia: sed ni pauci admodum\*.—"It is a mistaken complaint, that very few people are naturally endowed with quick apprehension; and that most persons lose the fruits of all their application and study, through

\* Quintilian. I. 1.

a natural defect of understanding. The case is the very reverse, because we find mankind in general to be quick in apprehension, and susceptible of instruction. This is the characteristic of the human race ; and as birds are provided by nature with a propensity to fly, horses to run, and wild beasts to be savage ; so the working and the sagacity of the brain is peculiar to man ; and hence it is, that his mind is supposed to be of divine original. Now, the dull and the indocile are in no other sense the productions of nature, than are monstrous shapes, and extraordinary objects, which are very rare.”—Our natural powers may be very much enlarged by study ; and the memory may be considerably strengthened by exercise. If all men would accustom themselves to reflection, few would be ignorant ; and their want of reflection proceeds from their own folly and love of leisure, and not from the insufficiency of their natural endowments.

Young men, on entering upon the study of the law, feel convinced that very great attention is necessary to become eminent ; and, induced by

motives unworthy of a rational being, they resolve not to strive with the obstacles in their way to knowledge. They excuse this unmanly resolution by affirming that their genius is more adapted to other studies; but this idea, which has gained credit with many, is very erroneous. He who has judgment and memory may, if he is industrious, succeed in any science to which he pays attention: if he has them not, he may acquire them. The same powers which, cultivated by study, have produced eminent divines, skilful physicians, or profound scholars, would undoubtedly have produced good lawyers. These observations may excite surprise, but they are not the less true on that account. Habits of attention and application, properly directed, produce what is commonly called genius\*. <sup>1</sup>

\* On a future occasion some arguments will be laid before the public which appear sufficient to support this proposition. Many reasons may be assigned for particular intellectual excellence, besides that of an innate power peculiarly adapted to acquire it.

<sup>1</sup> We will not controvert these opinions, so far as they relate to the business of the *mere attorney*, although they



The student may rest assured, that without industry, and that confidence which an enthusiastic desire for improvement never fails to inspire, no man will become eminent ; and he must remember, that society forms a very different opinion of the man of sound judgment and perseverance, who scarcely ever fails in his attempts, and the

seem too broad and general even in that application. But surely there is a sort of talents necessary for the counselor and advocate, which no study can attain, unless the elements are given by nature : that quick comprehension ; that immediate and penetrating perception ; those rapid movements of the mind ; the glowing imagination and impressive expression—all of which combine to form the accomplished advocate, although susceptible of vast improvement by exercise and study, cannot be wholly attained by them. It might as well be maintained, that study would have made the vilest doggrel rhymers a Milton, as that it can convert any dull dolt of the bar, into an Erskine, a Burke, or an Ames.

The instances mentioned in the text of Saunders, and others, do not prove the truth of the conclusion drawn from them ; these great men, had something more in them than *industry*, that brought them to the eminence they reached. Many men have had as much industry and more advantages, without their success.

fanciful and vain who, while they imagine themselves more capable to learn than others, pass their lives in indolence or trifling pursuits, without acquiring that knowledge of their profession which ensures successful practice.

ON

## INDUSTRY AND TEMPERANCE.

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WITHOUT habits of industry and temperance, a young man has a very unfavourable reception among society, as a lawyer. Labour cannot be dispensed with : <sup>2</sup> an attorney, without it, must remain ignorant of the law on subjects very important to be known ; and want of know-

<sup>2</sup> This is true : but there is danger in this, as in every other science, of reading too much and reflecting too little. The power of the understanding may be weakened by attending only to the memory ; by constantly collecting and using the thoughts of other men, and never exercising our own. We would recommend to the student, frequently to lay down his book, and by deep reflection incorporate the subject in his own mind ; to exert his powers in examining, analyzing, and testing, by his own reason and understanding, the opinions of his authors.

ledge must frequently be attended with injury both to his own character and his client's fortune. This book may be read by parents desirous of bringing up a child to the profession of the law ; and it will be their duty to consider whether he is industrious, and whether his health will permit him assiduously to employ his time, and cultivate his talents. If from his former habits of life there is any probability of his not doing so, they will act unwisely to place him at the desk of an attorney. It is not without great caution that the public intrust their professional concerns to any persons, and daily experience evinces, that the respectable and opulent part of society will not commit them to an attorney who is known to be deficient in information, or to be inattentive or dilatory in transacting his business.

Intemperance not only destroys the powers both of mind and body, but it robs a youth of the most valuable blessings of life, and renders him a disgrace to that society of which he ought to be an ornament.

I need not swell my pages with encomiums on industry and temperance : they are so necessary, even in the common employments of life, that it would be superfluous to write a long chapter on their utility in the profession of the law.

## ON STUDY.

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A YOUTH, desirous of acquiring extensive information, may seek it with the greatest advantage when he is most inclined to read and reflect. The very early part of the day has been generally recommended, but it does not appear that it is always the most proper. Many examples might be produced of learned men, who have appropriated the morning to exercise or amusement, and have preferred the evening for study : indeed some have confessed, that they studied to greater advantage by the light of the lamp than by the light of the sun. These exceptions are not alluded to with a wish that the student should devote to study the time allotted for sleep, since

by so doing he would impair his constitution and injure his sight ; but to convince the inexperienced, that if they cannot employ the morning in reading, they may, if disposed, perhaps with equal advantage, employ their leisure in the evening to that purpose.

Early rising, on many accounts, will be advantageous to the student ; and after an hour's exercise, he should sit down to his studies ; but whether he makes choice of the morning or evening, he should always study with very great attention.

Proper definitions should be committed to memory ; for without an accurate idea of the import of law terms and phrases, law books cannot be studied with advantage. Some are not properly defined ; but generally a young man will meet with explanations sufficiently accurate to enable him to understand his author as he proceeds. It is not only in the study of the law that the peculiar import of words should be strictly ascertained : without attention to this subject, no one can become acquainted with

on which the assertion is founded. By thus industriously attending to his studies, he will perceive more at large the principles of the law, and be enabled to judge how far the reference sanctions the opinion of the writer. Authors frequently extend too far the authorities on which they depend : and reference will be of essential service.\*

From this method of study the reasoning powers will be strengthened, and the student will be taught how to draw accurate conclusions from decided cases. He will not in his practice labour under the disadvantage of extending an authority too far, or of underrating its extent, which is the invariable consequence of a superficial and inattentive course of study. Some students, more gay than wise, will, perhaps, be unwilling to forego the usual gratifications of the

\* It is surprising how frequently Abridgers and elementary writers are found to be unsupported in their positions by the authorities they cite. They can seldom be relied upon. Viner is the most safe Abridger, because he abridges less than others. His arrangement too is very excellent and perspicuous.



young, for the innumerable advantages arising to themselves, and to society, from laborious application ; but to those ingenuous youths, who prefer improvement to pleasure, it will be consolation to reflect, that by so doing, they may probably shine conspicuous among the great lawyers of the age ; or that, at least, they will become better men, and more capable of conducting the affairs of their clients, than their contemporaries are, who pass their leisure in employments less favourable to virtue and to knowledge.

## ON THE STUDY

OF THE LAW OF

# NATURE AND NATIONS.

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THE books here recommended to the perusal of the student, are the most useful that have come to my knowledge : yet there are chapters in some of them, which able critics would condemn for inaccuracy. Such books, however, must be studied till our authors produce better. This is not a place laboriously to enter into a criticism on the excellencies and defects of authors : I have neither time nor inclination for so fatiguing and unpleasant a task ; nor do I see how I could render much service to my young friends by undertaking it. If such works as are mentioned improve the student, I shall be satis-

fed ; and if they do not, it will be his own fault. Some of the best may have escaped my notice, but none have been particularized from any other motive than that of benefiting those, who are interested in the able discharge of professional duties.

To become learned in the law, a clerk should not commence his studies by perusing volumes written on the laws of his own country ; if he does, he will find he has begun with works he cannot clearly understand, and has been endeavouring to acquire from the rivulets, what is only to be gained from the fountain of jurisprudence. Instead of first reading, (as is generally the case), Blackstone's Commentaries, or Wood's Institutes, a knowledge of the law of nature and nations should be obtained. For this purpose, it will be more prudent to begin with the moderns, than to go back to the ancient writers of Greece and Rome, for what is said by them on the subject. Besides, many attornies' clerks could not read the original works ; and with translations alone, no youth, animated with an

ardent desire to gain knowledge from the purest sources, ought to be satisfied.

It will be indispensably necessary, that he should make himself acquainted with either Grotius de Jure Belli et Pacis, or Puffendorf de Jure Gentium et Naturæ. Grotius was more learned than Puffendorf, and was much better acquainted with the civil law, from which he illustrates his sentiments, and makes quotations in every chapter. Puffendorf's is a more recent, and upon the whole, a better work than that of Grotius. Indeed, Grotius's book is so fully criticised and quoted by Puffendorf, that it may be said to be incorporated in his work.

Of each of these books, a number of editions have been published in the Latin, German, French, and other languages, but most of them are carelessly printed. In selecting books, young men should rely on the judgment of some well-informed friend; for bad editions of works, in the ancient or foreign languages, will confuse and mislead them. There is a Latin edition of Puffendorf, printed at Amsterdam, by Walters, in

1650, and although with a good type, and on good paper, the correction of the press has been so much neglected, that there is scarcely a page without errors, which many young men would not detect, or at least could not rectify; and they would, from such a work, seek for information in vain. The edition of Puffendorf, best calculated for the study of an English lawyer, is that of Amsterdam, 1712, with annotations by Barbeyrac, or that published at London in 1717, which is a translation of the Amsterdam edition.

The Latin of Puffendorf is much more impure than that of Grotius; and his quotations, from his not having a sufficient knowledge of the Greek language, are sometimes incorrect; and consequently his reasoning, when grounded on such quotations, must be false or impertinent. He often relied on the Latin translations, and was too inattentive to the original: this is manifest, from his frequently erroneous construction of passages in Homer, Demosthenes, and other Greek authors. In the edition of 1712, many of these mistakes are pointed out, and the annotator

has ingeniously controverted a few of the author's arguments, which appeared to him unsupported by reason and truth.

Grotius appeared in an English translation, first in 1682, in folio, with the annotations digested into the body of every chapter; and since that time there have been one or two translations in octavo. I know not of any good Latin edition published in this country. There is a tolerable good one printed at Amsterdam, in 1720, edited by Barbeyrac, which contains all the Commentaries on Grotius, until that time. This edition was republished in two volumes octavo, at the same place, in 1735.

The student may now direct his attention to Burlamaqui on the Principles of natural and political Law, and Vattel's Law of Nations. <sup>s</sup>

<sup>s</sup> We would add Rutherford's Institutes of natural law.

# ON THE STUDY OF HISTORY.

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AN acquaintance with history, and particularly that of our own country, will be absolutely necessary. Without a knowledge of the history of his own country, no man can become intimately acquainted with his country's laws. Nothing can give a clear idea of, or enable us to account for, our admirable constitutional regulations and legal decisions, but a knowledge of the customs and manners of our ancestors, of their establishments, and of the causes of innovation.

The ingenious author of *Eunomus* has said, that "history, well attended to, will furnish useful observations, and a kind of criticism on law

books themselves, with regard to their doctrine. For our reasoning in this respect may sometimes be extremely fallacious, and mistakes may be of the worst consequence. We take a report-book in hand, suppose the case we consult is extremely clear and consistent with itself, but the doctrine startles us as remarkable. We therefore look into a contemporary report : here, too, suppose we find the same doctrine, grounded on the same circumstances of the case, and the credit of each report is confirmed by its own consistency with the other. But if the credit of the doctrine itself is in question, we must look into the times, consider who were the judges, inquire into their character from history, where history has been at all particular on the subject, and see whether it was a time when the little finger of the law was heavier than the loins of the prerogative, or whether the servility of the times was such that the case was inverted in favour of the prerogative."

By comparing facts as transmitted by histories, a sufficient knowledge may, perhaps, be ac-



quired of those who were concerned in the determination of legal matters, whether criminal or civil. A judge, though cruel and unjust when determining matters of indictment treasonable or felonious, may be honest and wise when determining civil suits, independent of political influence. The conduct of Jefferies, who was Chief Justice of the King's Bench, in the reign of Charles II., and Lord Chancellor in the reign of James I. justifies this assertion.

Characters of persons, in early periods, it is extremely difficult to ascertain. Facts may be erroneously represented; we can scarcely expect otherwise; and if true, they cannot illustrate private characters so well as public: yet a knowledge of the private characters of eminent individuals would be extremely useful. Historians of their own times, such as Sallust and Clarendon, have a good opportunity, and ought to give just characters; but they either praise or censure too freely. Sallust has not done justice to Cicero; and perhaps in all histories, written under similar circumstances, facts of the same nature might be pointed out;

but it is to no purpose; the best use must be made of such histories as can be procured. In historical writings we are not arrived at perfection. Prejudice, ignorance, or party spirit, operate too forcibly on the minds of historians.

The profession is destitute of a history of England, in which the origin of our laws, and important judicial decisions, are traced and explained with sufficient accuracy and minuteness. Such a history no one, not conversant with our laws, can write; and it is desirable that some industrious and sensible man, who has acquired a great share of legal as well as other learning, would undertake to write one. Several important points of law are involved in such obscurity, from the deficiency of early authentic historical records, that our greatest lawyers have been unable to decide them satisfactorily: the question, whether the lands of the Saxons were subject to the feudal tenure, or whether tenures, with all their consequences, were introduced by William<sup>1</sup> the Conqueror, has been long disputed, and has divided in opinion many very eminent

lawyers, and among them, Lord Coke, Selden, Nathaniel Bacon, Sir Roger Owen, Tyrrell; Craig, Lord Hale, Somner, Sir Henry Spelman, Dr. Brady, and Sir Martin Wright\*.

Bacon and Clarendon are the only eminent lawyers who have written on English history; and it is hoped that their example and success will animate some able lawyer of the present time to direct his talents to a similar employment. A history of this country, written by a man who would support his observations by laborious research, and a reference to all the proofs which might by great diligence be selected, would be particularly useful to young law students. But till a work of this description is brought forward, he should read Hume's **History** of England, with Smollett's continuation to the death of George the Second, and the history of the reign of George the Third, by Bisset or Adolphus.

In the perusal of the polished histories of Hume and Gibbon, care should be taken that

\* Reeves's Hist. Eng. Law, I. 9. and the authorities there referred to.

the insinuating style, and deistical observations of the authors, do not ingraft on the mind sentiments repugnant to the interests of mankind, and the dictates of true religion. This will be very necessary, as they have taken every opportunity of bringing into contempt the doctrines of christianity : and the style in which they have written, and the manner in which they have conducted their histories, have gained them many admirers. Their works certainly contain much useful knowledge, accompanied by very acute reasoning ; but sometimes they have drawn false conclusions from ascertained facts ; and sometimes it may with justice be said, they have laboured to cover a misrepresentation with the appearance of truth. These errors are not numerous, but they are likely to escape detection by a Tyro ; and on this account it would be thought advisable, by many well-informed men, that instead of Hume, Henry's History of Great-Britain, with Andrews's continuation, should be read, and that the perusal of Gibbon be postponed till some future period.

From an abridgment of the English history, a very intimate knowledge of all the principal events, the times when they happened, and by whom or by what means they were occasioned, should be engraven on the mind : and, for these purposes, frequent reference will be necessary.

Hume, as well as the author of a work on our constitution, which I shall presently have occasion to mention, has been very concise on the principles of our laws, and the customs of our ancestors, in the very early period of our history ; and therefore the student should read, with particular attention, Millar's ingenious and well-written historical View of the English Government, from the settlement of the Saxons in Britain to the accession of the House of Stuart\*.

The student should also procure some of the

\* Mr. Millar was professor of law in the University of Glasgow. His history, to the accession of the House of Stuart, was published in 4to. in 1787. Since the author's decease it has been published in 4 vols. 8vo. and some additional chapters have been added, which bring it down to the Revolution ; but the posthumous publication is inferior to the other.

more voluminous historians, and one or two of our old English chronicles, as books of reference; for by comparing different authors he will improve his understanding, and be enabled to form a judgment for himself.

In addition to the foregoing works the following are recommended: Gibbon's History of the Decline and Fall of the Roman Empire—Bigland's Letters on the Study and Use of Ancient and Modern History—Robertson's Histories of Scotland, America, Charles V. and his Historical Disquisition concerning the knowledge which the ancients had of India. As an historian, Robertson is excellent, and his style has been much admired by very able critics.

If the reader understands French, let him peruse the works of Montesquieu. His "*Esprit de Loix*," and "*Considerations sur les causes de la grandeur des Romains et de leur décadence*," are replete with good sense and acute reasoning. There are several good editions of this author in

4to. and translations of his works may be met with at any bookseller's. \*

It will not be prudent to bestow much attention on the last mentioned historians during clerkship ; but some of them may be read with the books in the subsequent chapters.

Many histories of considerable merit, which in a few years the student will read with advantage, are here omitted, but not without sufficient reason. These suggestions are intended to be applicable to *young* students, and when they have been duly attended to, hints as to the choice of books, either on historical, or any other subjects here treated of, will not be requisite.

\* The American will add to this selection, the best histories of the settlement of his own country : of the early governments, charters, customs, and laws of the several colonies, with their changes and improvements. For a complete knowledge of the principles of our federal constitution, and indeed for the principles and nature of government in general, the *Federalist* will be resorted to with the utmost attention.

## ON THE OLD LAW BOOKS.

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THE ancient writers on our laws are not numerous. Previous to Sir Edward Coke, our jurisprudence had to struggle with many obstacles, and it was not founded on established maxims, transmitted in any well-written work for many years. Some account of the customs and laws of our ancestors is given by the Greek and Roman historians; and though our knowledge of the very remote periods of our constitution must, for ever, in many respects, remain inaccurate; yet, we shall find much of what has been recorded in ancient history, bears a strong resemblance to customs and laws now in force.

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The first writers who attempted to digest and fix our jurisprudence, were the author of *Dialogus de Scaccario*, Glanvil, Bracton, Britton, the author of *Fleta*, and Fortescue. A full and accurate account of these and our other ancient law writers, will be found in Reeves's *History of the English law*. Those which I have particularized were all originally published in Latin, but there was one French edition of Britton, in 1640, and several translations of this and Fortescue's work have been published.

Glanvil confines himself to the matters of jurisdiction in the *curia regis*.

Bracton was a man well acquainted with Roman jurisprudence, and is often quoted and relied on, as to the principles of our laws and constitution, by all our great lawyers: even Sir Edward Coke frequently quotes and comments on the text of this author. His Latin is much more pure than that of Glanvil, but all the editions of his work are very inaccurate.

Reports have been echoed from author to author, without examining the truth of them, that

Bracton copied and adopted the civil law, on more occasions than he was justified in doing by the decisions of our courts of justice: but this erroneous opinion has arisen from his repeated references to the civil law to corroborate and confirm the justice of our own; and from his frequently using the language of the *Corpus Juris Civilis*; and not from a studious and just examination of his work\*.

Britton and Fleta are nothing more than appendages to Bracton. Fleta was intended to be an epitome of that author; and the merit of Britton is confined to the single office of supplying some few articles which had been lightly touched upon by Bracton, with the addition of the statutes made since his time.†

Fortescue *de Laudibus Legum Angliæ* was perused by the learned Sir William Jones, at the commencement of his legal studies; and his biographer relates that it was much admired by that great scholar. There are several editions of this work in 12mo; and Waterhous, in 1663,

\* Reeves, II. 86, et seq.

† Ibid. II. 89.

published a commentary upon it in folio, very closely printed. <sup>7</sup>

These ancient law books have been so fully extracted from, and commented upon, by modern authors, and so much of their works is at this day of no authority, that the perusal of them should be deferred by the student till the expiration of his clerkship. He will find in Reeves's history, and Blackstone's commentaries, the chief part of what is really useful in them, accompanied by sensible observations. Other authors on

<sup>7</sup> These ancient authors are not much read in our offices or used in our courts. Titles to real estate are derived from such different sources, and depend, generally upon principles so different from those in England, that a very minute perusal of books upon that subject is not so essential to the American as the English student. Still a general knowledge of the English tenures and titles of real estate, should not be neglected. But for practical utility, the law relating to personal contracts, especially of a commercial nature, should have a first attention. The law of insurance, bills of exchange, promissory notes, and indeed of commercial contracts and relations of every kind, should be carefully obtained. The *Reports* during the time of *Lord Mansfield*, and from thence down, should be resorted to for these purposes.

our laws, who lived in periods antecedent to those in which the lawyers flourished whom I shall hereafter mention, it will be imprudent to devote more time to, during clerkship, than is necessary for reference.

**ON THE STUDY**  
**OF THE**  
**ENGLISH CONSTITUTION.**

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WHEN the student comprehends the principles of the law of nature and nations, and the history of England, he should study the constitution of his country : and first, De Lolme on the English Constitution may be read. The author was a foreigner, not thirty years of age, and had resided in this kingdom but a very short time previous to the first edition. His work evinces that he was a man possessed of good natural powers, and that he was not unacquainted with the history of this kingdom, and most of the best authors, ancient and modern. It was originally published in the French language in Holland.

The English translation appeared, with several additional chapters, in 1775.

It is with regret that I turn my thoughts to the fate of this gentleman, who, possessing an excellent and highly cultivated understanding, derived very little profit from his publications, and was but scantily provided with the common necessities of life. He died on the continent, in great distress. His book on the constitution is not free from errors ; but it has been honoured with the approbation of many of our scholars ; and the elegant writer of Junius's Letters recommends it to the public, as a performance deep, solid, and ingenious. The best edition is that of 1807.

After De Lolme, it will be proper to read *Eunomus*, or Dialogues concerning the Law and Constitution of England, by Edward Wynne. It will appear, in the perusal of the books which will be mentioned in the next chapter, that *Eunomus* has been greatly admired as an elementary treatise, by several learned lawyers. Many vulgar prejudices and fallacious arguments, relative

to the profession and the professors of the law, are, in this work, ably refuted.

In the next place, or rather as soon as he is acquainted with Blackstone's Commentaries, the student should read Whitelock's Notes upon the King's Writ for choosing members of parliament, 13 Car. II, being disquisitions on the Government of England, by King, Lords, and Commons, 2 vols. 4to\*. This work is a very copious comment on a single writ, in which many points relative to our constitution are ingeniously and learnedly discussed.

Lastly, let me recommend, as a work of great merit, Sullivan's Lectures on the Constitution and Laws of England.

\* Eunomus, lxxxii.

ON THE STUDY  
OF THE  
ENGLISH LAW.

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KNOWLEDGE is not acquired by reading many books, but by impressing deeply on the mind the contents of those which are read, and by repeatedly reflecting upon that information which they convey. Part of this observation is implied by the often quoted maxim: *multum legendum esse, non multa*. It is not necessary that all the ponderous volumes which fill the shelves of even a well-selected law library, should be pored over page after page. Many of them contain only the cases of their predecessors, accompanied with but few observations to repay the student for the search. Indeed, a multitude



of law books have been printed, which are of use to the profession only as *indices* : they may occasionally lessen the practising lawyer's labour, but they are not proper resources for a student ; and it is not often that the practising lawyer relies on their pages, without reference to authorities. A great number of law books might be disposed of for homely purposes, without injury to the profession. But it would be unjust to pass over, without very high commendation, the many modern works which treat separately on different branches of our law. The labour of the student has been much decreased by such men as Fearn, Powell, Hargrave, and Butler ; and by single treatises on intricate subjects, the student of these days has all the learning relative to them produced before him, which otherwise he could not have collected, except from years employed in laborious research\*.

To attain much law learning, many books must be read, and thoroughly understood ; but

\* Preston's Convey. II. xii.

many also may be neglected. Our law writers, (two or three excepted) have not paid that attention to the arrangement and style of their publications, which it is desirable they should have done. For this, and other reasons, the student must content himself, though he should not immediately perceive the advances he has made, nor have met with that satisfaction which is the reward of industry, and which never fails to attend it in the study of jurisprudence.

At the commencement of all studies, difficulties present themselves ; but they are surmounted by perseverance ; and no man ever persevered unsuccessfully in the study of the law. Discordant determinations have been made upon similar occasions, and the abstruse connections and dependencies distinguishable in an infinite number of cases *apparently* similar, but *really* very dissimilar, cannot be discovered or accounted for by a young student ; but time and application will enable him to draw proper conclusions from them, and to decide on their various bearings with a judgment not easily misled. Reflecting

young men are capable of forming just opinions much earlier than is generally believed.

The professional student should not enter hastily upon works of a controversial description : these should be left on the shelf, till the mind is well stored with knowledge. The first which he takes into his hands would appear to have espoused the right side of the question. Controversial books are generally written by ingenious men ; and they may mislead the student, because ingenious reasoning too often usurps the place of established cases and solid arguments. Before considerable advances in study have been made, and where opportunities of reference are not often afforded, the student implicitly relies on the author he is reading : he is not capable of arguing the point with him as he proceeds ; and he cannot detect his errors, by bringing forward authorities which may have escaped the controversialist's attention, or which, from regard to a favourite hypothesis, have been suppressed.

The student should not despond, if he cannot very soon unravel the intricacies which will oc-

casionally present themselves ; nor flatter himself with the idea that a profound knowledge of other professions is more easily acquired. The elements of every study which requires a strong mind and a strong memory, are pregnant with difficulties. People talk about studies of which they are ignorant, and assert that one is dry, another extremely unpleasant, another mean or useless ; and such absurd assertions are oftener believed than examined.

It is necessary that an observation be made to the student, on the folly of permitting his diligence to relax, when he finds that his acquirements are superior to those of his professional contemporaries. A man soon discovers whether his success in argument proceeds from ingenuity of reasoning alone, or from the depth of his attainments. But sometimes the inferiority of the persons with whom he compares himself, may tend to give him a false estimate of his own powers. If a diligent student contrasts himself with one who is less diligent, the pride of exultation should be checked by the reflection, that

beyond the circle of his acquaintance he will meet with others, who, by greater industry, are much more learned than he is : and this should encourage him to perseverance, that his feelings may not be wounded when he is exposed to such comparison.

Dr. Johnson, lamenting the disadvantages which literary men experience from being too wise in their own estimation, observes, " Their ardour remits, their diligence relaxes, they give themselves to a lazy contemplation of comparative excellence, without considering that the comparison is hourly growing less advantageous, and that the acquisitions which they boast are mouldering away."

In the memoirs of the life of Sir Eardley Wilmot, we find the chief justice addressing one of his sons, in words applicable to every attorney's clerk, who has to make his fortune by his own industry and abilities. " Be confident that the pains which are necessary to make your own fortune, will be most amply compensated to you, by the satisfaction which arises from indepen-

dency; and, in that respect, the law has charms superior to any other. As you are now between sixteen and seventeen, you must seriously consider and examine the feelings of your own mind; and to whatever figure in the dial of business the finger points, you must invariably keep your eyes fixed upon it; all your studies, and applications, and habits must lead towards it."

From the writers already recommended, much useful information relative to our constitution will have been acquired; and the student may now, with propriety, have recourse to Reeves's *History of English Law*.

Reeves\* has studiously avoided inquiries beyond the pale of the English law, and confined himself to those of more utility to young students. He might have enlarged many parts of his history, had it been written for lawyers; but it was his intention to adapt it for students, and by closely pursuing his labours, it is more useful,

\* Reeves, I. 47.

than if he had diversified his style with too many foreign allusions, and fanciful discussions. Some parts of our law will, perhaps, for ever remain in obscurity; and it is not a fit employment for young men to puzzle their intellects with useless theories.

Blackstone's Commentaries on the Laws of England, with Notes, by Christian, should now be read. This very valuable and learned work reflects honour on the author and the profession, and is no less admired by the lawyer for its contents, than by the critical scholar, for the elegance of diction, and the correct didactic style, in which it is written.

An accurate knowledge of the Feudal Tenures is very essential: and to the information which is to be acquired from Sullivan, Reeves, Blackstone, and the historical works before recommended, must be added a most intimate acquaintance with Wright's Law of Tenures, and Watkins's edition of Gilbert's Tenures. This subject is also ingeniously discussed by Mr. Butler, in one of his notes to Coke upon Littleton.

When the feudal system is well understood, the student may read Fonblanque's Treatise on Equity,—Roberts on Frauds,—Jones's Essay on Bailments,—Watkins's Principles of Conveyancing,—and Preston's Essay on Estates\*, and on the rule in Shelley's case. Mr. Watkins, in the second edition of his Principles of Conveyancing, has expunged many errors which had escaped his attention in the former, and has inserted some additional authorities.

The student may now successively take in hand Francis's Maxims,—Woodeson's Lectures,—Barton's Elements of Conveyancing,—Sheppard's Touchstone of Common Assurances,—Cooke's Bankrupt Laws,—and Saunders's Reports, by Mr. Serjeant Williams. The annotations in these Reports display laborious research, and a comprehensive knowledge of the various heads of the law which they are intended to illus-

\* This essay was published when the author was only in his 22d year : a convincing proof of what may be accomplished by assiduous attention.



trate, and are peculiarly worthy the attention of students.

From these Reports,—Cox's Peere Williams, and an edition of Plowden's Reports on a similar plan,—the student will acquire very important and necessary information. Well written notes on such of our old Law Reports as are of authority, would be an acceptable present to the profession.

From great attention to the books already mentioned in this chapter, the student will perhaps find that his progress has exceeded his most sanguine expectations. After he is well acquainted with their contents, but not before, he should devote his attention to the Notes to Coke upon Littleton, by Hargrave and Butler,—Toller's Law of Executors,—Bacon, Cruise, and Sanders on Uses,—Watkins on Descents, and on Copyholds,—Runnington on Ejectments,—Powell on Devises, on Powers, and on Mortgages,—Ferne's Essay on Contingent Remainders, and on Executory Devises, and Preston's Treatise on Conveyancing. In these books, several cases of

almost similar import are placed before the eyes of the student. To draw the conclusions which they warrant, these authors have bestowed great pains ; and on some occasions their distinctions are so very nice, that he will be at a loss, without considerable attention and repeated perusal, to draw a proper inference from them ; yet, ultimately, he will clearly comprehend their meaning. This should animate him to persevere in his labours ; and it should tend to repress that absurd arrogance which prompts young men to decide dogmatically on any doubtful point, without having qualified themselves by reading, or reflection, to speak upon the subject.

It has been customary to recommend Coke upon Littleton immediately after Blackstone's Commentaries, or Wood's Institutes ; but thinking it, in that order, improper for a young student, I have not before recommended it to his notice. The edition, with notes by Hargrave and Butler, is one of the most useful works to be found in a lawyer's library : its contents, must, however, be very diligently attended to, or the

student will derive but little advantage from its perusal. In many of those notes there are various heads of our laws treated of with so much ability, perspicuity, and conciseness, that the student will be astonished at the extensive learning of the authors, and at the ingenuity with which they have applied it for the benefit of the profession.

An acquaintance with the laws relating to the settlement of the poor should be acquired, or the student will be very much at a loss in the proper conduct of the quarter sessions' business. The best books we have on these laws are Const's edition of Bott's Poor-Laws,—Nolan's Poor-Laws,—and Burrows' Settlement Cases. But these alone will not afford the necessary information: successful practice at assizes and sessions very much depends upon an acute judgment in collecting and producing evidence; and to do this, the law of evidence should be minutely studied. The best, and indeed the only books of merit which treat separately on this subject, are Gilbert's Law of Evidence,—and Peake's Evidence.

Gilbert has long been held in high estimation. Peake's is a modern publication, and will be found very useful.

Additional knowledge on the law of evidence may be acquired by reference to Bacon's Abridgment, and Espinasse's *Nisi Prius*; the cases in this latter work are stated too concisely for copious information, but it is very useful to a practising lawyer, as it contains an epitome of the decisions which have been made relating to the different kinds of actions devised by our law for obtaining rights, and redressing wrongs.

A knowledge of the crown law, except in cases of libels, is on few occasions requisite to a London attorney; criminal proceedings being conducted, in the metropolis, by men, whose business is confined to the prosecution and defence of prisoners. But in the country, an attorney must necessarily attend, in early life especially, to proceedings of a criminal nature for the crown, and in some cases on behalf of the prisoner: though the latter department is commonly conducted by illiterate men of low cunning,

who are distinguished from more honourable attorneys, by the epithet of jail solicitors.

If the student therefore is destined to practise in the country, notwithstanding he will generally have sufficient time, by reference, to make himself conversant with business of this description, it is advisable that he should acquaint himself with East's Pleas of the Crown, and the principal chapters in Burn's or Williams's Justice.

The preceding labours should not exclude an attention to the Modern Reports ; but without a copious fund of elementary knowledge, modern reports cannot be properly understood.

For occasional reference, Comyns's Digest, and Bacon's Abridgment, will be found very valuable.

The Statutes at Large are too voluminous to be read ; and it is not necessary that an attorney's clerk should devote his time to more than those which relate to the conveyancing department : these should be frequently referred to, and compared with the comments on them which he will daily meet with.

A list of those cases which have made material alteration in our jurisprudence, or have determined points which had been long disputed, is inserted in Barton's introductory chapter to his Elements of Conveyancing: the perusal of these cases will be necessary and advantageous when the mind is well stored with elementary knowledge.

I have omitted to mention, in this chapter, many works by gentlemen whose abilities and characters I respect; but in selecting such as I think proper for young men, I hope I have not neglected to insert the most useful: and it is presumed that the student, when he has attended to the preceding recommendations, will not need any additional guidance from me upon this subject.

<sup>s</sup> We are surprised the recommendation of this author goes so far in favour of Elementary Treatises, and abridgments, instead of referring the students to the Books of Reports, the sources from which they are drawn. Such compilations are more useful in aiding the practising Lawyer, by their references, in a trial, than in instructing a student in the principles of the Law.

**ON THE STUDY**

**OF**

**THE CIVIL LAW.**

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THE civil law undoubtedly claims the attention of the well informed lawyer, though a very intimate investigation of its principles cannot be here recommended. The Romans, where they became conquerors, also became legislators; and to the civil law we are indebted for a greater part of our laws than is generally allowed: many cases, founded on its authority, have been determined in our courts, particularly those which have arisen on wills and trusts\*. Trusts had their origin among the civilians, as will be mani-

\* Eunomus, l. 79.

fest from the study of those authors who have written on the subject. But, happily for us, in laws respecting liberty, the female sex, crimes, and constitutional securities, we greatly differ\*.

The observation made by the venerable author of the Commentaries, in his chapter on the study of the law, is applicable to this subject :

“The civil and canon laws, considered with respect to any intrinsic obligation, have no force or authority in this kingdom: they are no more binding in England than our laws are binding at Rome. But as far as these foreign laws, on account of some peculiar propriety, have in some particular cases been introduced and allowed by our laws, so far they oblige, and no farther; their authority being wholly founded upon that permission and adoption.”

Many attempts have been formerly made for the introduction of the civil law into this kingdom, but without success; and it appears from the journals of the house of commons, that in the

\* Eunomus, l. 80.



reign of James the First, Cowell attempted to form an arbitrary system of English law in conformity to the civil\*. No sensible and liberal minded man will wish, nor is there any reason to fear, that the tyrannical rules of Roman jurisprudence will be received here.

The civil law, for the general equity of its rules, and wise decisions respecting property, has been greatly admired by the learned and sensible part of mankind; and no man can become a good lawyer, or classical scholar, without studying its elements. This knowledge is essentially requisite in the higher orders of the profession, and it will be found very useful to an attorney†. Those who reside in sea-port towns will find the civil law practically serviceable, especially when they are employed in maritime affairs.

Every one knows, that according to the calculation of the degrees of kindred, by the civil or canon laws, several important branches of our law are regulated. Our Chancery proceedings are

\* Eunomus, I. 78.

† Burnett's Life of Hale, 24.

founded on Roman jurisprudence ; and the statute for the distribution of intestates' effects is penned upon the principles of one of the novels published in the reign of Justinian. By uniting the study of the civil law with our own, it will be seen that an infinite number of cases are founded on rules laid down in the *Corpus Juris Civilis*. "Nor have I the smallest scruple to assert, that the student who confines himself to the institutions of his own country, without joining to them *any* acquaintance with those of Imperial Rome, will never arrive at any considerable skill in the grounds and theory of his profession : though he may perhaps attain to a certain mechanical readiness in the forms and practical parts of the law, he will not be able to comprehend that enlarged and general idea of it, by which it is connected with the great system of universal jurisprudence ; by the knowledge of which alone he will be qualified to become a master in this art, and be capable of applying it as an honourable means of subsistence for himself, and credit

to his country\*.” In every profession different kinds of learning are useful, which, to common understandings would not appear to bear any relation.

I shall proceed to mention such books as it will be proper the student should read during his clerkship ; after which period, if he is inclined to enlarge his knowledge of the civil law, he will, himself, be capable of selecting the most valuable works which have been written on the subject.

In Gibbon’s History of the Decline and Fall of the Roman Empire, there is an excellent chapter on the civil law, from which he will gain some useful information. After this chapter, Justinian’s Institutes should be read, which will always be deservedly admired for the elegance of their composition, and the method with which they are written : the edition, with Vinnius’s notes, in Latin, for reference ; and Harris’s edition, with notes chiefly relative to the laws of

\* Dr. Hallifax’s Analysis of the Civil Law, pref. xxii.

England, for repeated perusal. I would also recommend Hallifax's Analysis of the Civil Law, and Bever's History of the Legal Polity of the Roman State, and of the Rise, Progress, and Extent of the Roman Law.

On the utility of the civil law, in Great Britain and other countries, a book was published in Latin, at Oxford, by Duck, an author of the sixteenth century. A translation, as far as it relates to the authority of the civil law in this kingdom, was incorporated in a translation of a book, bearing the English title of The History of the Roman or Civil Law, written originally in French, by M. Claude Joseph de Ferriere, printed at London, in 1724. On comparing this translation of Duck's book, with a Latin edition printed by Elzevir, in 1654, several of the sections appear to have been omitted. This English book, if the student can procure it, he will find very useful ; it was translated by Bever.

If the student wishes to extend still farther his knowledge of this subject, I refer him to Tay-

lor's Elements\*, and Wood's Institutes of Civil Law. Dr. Taylor was the son of a poor man in Shrewsbury, and was educated in the free-school there, to which, on his decease, he left his library. He is represented by Johnson, in his life by Boswell, as a man of sullen taciturnity; but those who had the pleasure of his acquaintance, censure the manner in which the great lexicographer spoke of him. Had he been on more familiar terms with Taylor, he would have discovered that few men were more polite or entertaining as a companion, than the author of the Elements of Civil Law. The work itself is certainly open to objection: it is in many places desultory and confused; and the learned author has not taken the same pains to improve and complete this work, which he bestowed on other productions. Much learning is displayed in it, and sometimes irrelevantly applied; yet it is a work that will afford considerable instruction to the young stu-

\* A Summary of the Roman Law, taken from Dr. Taylor's Elements, has been published in one volume octavo.

dent. There are many quotations in it, from authors, whose works I do not suppose many attorney's clerks can construe : but every Greek quotation is translated into Latin at the bottom of the page ; and those who are acquainted with the author's extensive classical erudition will give credit to their accuracy.

The civil law will be much better understood, if the student makes himself acquainted with the two last titles of the digest. They are not in Harris's edition of the Institutes, nor in any I have seen of the various editions of that work by Vinnius ; but they are printed without the notes, in almost all the very small editions, particularly in those by Elzevir, of 1664 and 1676. These editions are elegant : the maxims of law are printed in red letters, to distinguish them from the other parts of the work. These titles, with twice or thrice perusing, will be easily remembered, and will be found serviceable in giving the student accurate definitions of words and general rules, especially if he consults the notes in the edition of *Corpus Juris Civilis*, by Gothofred.

For reference or perusal, in a more advanced state of study, these books should be accompanied by Domat's Civil Law, by Strahan, and the *Corpus Juris Civilis*, of which the most correct edition is that of 1663, in folio. On the civil law there are many Latin publications so erroneous, and so negligently printed, that even scholars cannot understand them ; how much, therefore, must they confuse and mislead those young men, who study the law, without any guide capable of assisting them. Domat's Civil Law was first published in France, and having met with the approbation of foreign jurists, was translated into several languages, and into English, by Strahan, who has supplied notes in illustration of our laws, distinguished from the translation of the text by crotchets and Italic letters. His observations on the alliance of our law and the civil, and on those parts wherein they differ, are valuable, because they are not mere assertions without proof. Reference is made to proper authorities ; and if he is erroneous, the fallacy of his conclusions will be detected by any one who undertakes

the course of study before recommended. His observations are generally correct. This book would have been more valuable, had the irrelevant matter, and some chapters of trifling value, been expunged in the translation.

Time should not be spared for a minute attention to the civil law during clerkship: and the perusal of Bever, Taylor, Wood, and Domat may, perhaps, with propriety, be deferred till after that period.



# ON COMMON PLACE BOOKS.

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TO abridge labour, to enable us to acquire knowledge with greater facility, and to retain it with better effect than we are able by reading only, common place books have been much recommended by many eminent men. But to the young student I fear they would prove more injurious than useful, and tend more to weaken than assist the memory. What is committed to paper, is seldom committed to the mind ; and the observations which are transcribed, are perhaps never recollected, until accidentally re-perused. For the first two or three years of his clerkship, they are not to be adopted, because, in common place books, all decisions and points of law which are important, should be inserted ; and,

as at this period of his studies, almost every one will be so, a clerk would be induced to insert many which he will so frequently meet with, that he cannot fail to remember them.

That which is attentively read, will be better understood, and more deeply impressed on the mind, by frequently reflecting upon it, than by committing it to paper. Biographers tell us of literary men reading with pens in their hands, to make extracts and remarks, and the biographers of Burke and Wakefield have made these observations, but it is apprehended their extracts were merely references to the work, followed by some useful observations of their own. Why should they copy, what they might immediately, when required, find printed? They would not thus consume that time which they could so much more advantageously employ in reading and reflection: and what would sooner tend to prevent close thinking, than such servile tedious labours?

As almost all law books have *indices*, why should common place books be used? If the

index is a good one, it may, when necessary, be consulted on any particular subject, with as much, and perhaps more advantage than a common place book. If it is defective, the reader may, with very little labour, as he peruses the work, collect matter for another more complete. These are my sentiments on common place books, but I by no means wish the student to adopt my opinions before he is convinced of their propriety. Experience and inquiry among persons capable of instructing mankind, have induced me to object to common place books; but many gentlemen have been very strenuous advocates for them, to whose opinions the greatest deference is due.

At the first entering on the study of the law, I am confident that it will be more prudent to employ time in reading, than in transcribing particulars, which a little acquaintance with the principles and the practice of the profession will render useless. After the judgment of the student is become more mature, and his knowledge of the law more extensive, I leave the propriety

of using common place books to his own determination. Should they then appear useful, I recommend, instead of one with an alphabetical index, Blackstone's Commentaries interleaved. In these books he may enlarge such chapters as appear to him defective, and add useful comments on the ancient customs, and modern alterations, which, if studious and attentive, he will be able to do in a manner that will prove serviceable to him in a more advanced state of his studies.

From the foregoing remarks, it must not be imagined that common place books for original observations are disapproved of: reflections or doubts, arising in the mind during study, should be committed to paper for revision and improvement, or in order to acquire information concerning them. \*

\* We are friendly to common place books. The act of writing has an effect to impress the matter on the mind, not only by the time the attention is thus made to dwell upon it, but by introducing new associations for recalling it to the memory. Besides, the note made is the common

place book need not be a literal transcription of the author, but a condensation of his meaning, and gives a good habit in this way : memory is thus further assisted. In turning to any head to insert a note, the eye naturally runs over the page : indeed it must do so, to discover the proper place for insertion. In doing this, the notes already made are so frequently presented to the mind, that they become fixed and familiar. A considerable space should be left between each note, so that when another occurs on the same subject, it will be generally necessary only to mark whether it be confirmation or contradiction of that made, or may be some limitation or modification of it. This saves much time in writing ; collects a great deal of law in a very small space, and prevents the common place book from swelling to an inconvenient size. There is another use in these books. In a long report of a case, very important and admitted principles may be stated by counsel, or by the court, which, not being the immediate point of the cause, will not be placed either in the index of the book, or any abridgment ; but may, nevertheless, be most useful clues or hints to further investigation when some occasion may require. As abridgment and all elementary works are themselves but common place books, I do not see much use in making extracts from them. When the student enters upon the *Reports*, he should open his common place book, and carefully insert in its proper place every important dictum, point and principle he meets with, whether it be that on which the case turns or not.

ON  
**PRACTICE,**  
AND ON  
**ATTENDING COURTS OF JUSTICE,**

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ON this subject a volume might be written ; but I shall confine myself to a few hints, and leave the student to the suggestions of his own mind on such points as are not particularly discussed. Some observations on practice will be found in a subsequent chapter.

A knowledge of the practice of the law is not to be acquired from the study of books, because there are none that will teach it. Books of this kind are, and perhaps always will be, among the *desiderata* of science, not only in the profession of the law, but in all other professions, and even in the inferior departments of trade. It is said by

some professional gentlemen, that practice claims the student's most particular attention, that theory or study is of little consequence to an attorney, and that any knowledge which is necessary, may, without trouble or expense to themselves, be easily acquired. But to these *dicta* no sound lawyers have acceded. Sir William Blackstone has justly observed: "If practice be the whole he is taught, practice must also be the whole he will ever know: if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him. *Ita lex scripta est* is the utmost his knowledge will arrive at: he must never aspire to form, and seldom expect to comprehend, any arguments drawn *a priori* from the spirit of the laws, and the natural foundations of justice\*".

That a knowledge of practice alone is sufficient for a respectable attorney, none but ignorant men will affirm. If the theory of the law

is not studied, the practice will never be understood; and without a knowledge of the principles of practice, no ingenious youth, desirous of advancing the reputation of his profession, will be contented: he will wish to trace its origin, and to understand the principles on which it is established.

The most useful books on this subject, in addition to those already mentioned, are the following:—Barton's *Suit in Equity*,—Boote's *Historical treatise on an Action or Suit at Law*,—Fowler's *Exchequer Practice upon Proceedings in Equity*,—Burton's *Practice of the Office of Pleas in the Court of Exchequer*,—Edmunds's *Exchequer Practice*,—Gilbert's *History and Practice of the court of common Pleas*\*,—Gilbert on *Executions*, with the *History and Practice of the Court of King's Bench*,—Hands on the *Modern Practice of levying Fines, and suffering Recoveries in the Court of Common Pleas*,—Morgan's *Attorney's Vade Mecum*,

\* *Black. Com.* III. c. 18.



—Mitford's Pleadings in the Court of Chancery, by English Bill,—Tidd's admirable work on the Practice in the Court of King's Bench in Personal Actions,—Tidd's Law of Costs,—Harrison's Chancery Practice,—and Turner's Costs in Chancery. To these may be added the books of Practice, by Impey and Sellon. Sellon's work was originally compiled by Mr. Crompton; but it is considerably improved in the present edition.

The reader is not required to make himself perfectly acquainted with the contents of these works; but the principal points of practice should be understood. Several of the books on common law practice, very nearly resemble each other in their contents: and I have recommended different works for reference, rather than for repeated perusal.

The minutiae of practical business can only be taught by practice; yet, in the common law proceedings, the books are generally very accurate, and will on reference, furnish the necessary information. But it is not so in Chancery prac-

tice. This is not carried on with that exactness and precision with which the practice of other courts must be conducted ; when any difficulty arises, motions are generally resorted to, the result of which depends on the circumstances which come before the court ; and with the acquaintance of only one party's case, it is not easy to determine what that will be, till the contents of affidavits, the state of facts, and other proceedings are known.

The nature of *motions of course* may be collected from books.

In making references on particular points of law, the following books will be found useful :—  
Index to the Statutes at Large,—Burn's Digested Index to the Modern Reports of the Courts of Common Law, previous to the commencement of the Term Reports,—Tomlins's Index to the Term, and Bosanquet and Puller's Reports,—  
A Digested Index of the Chancery Reports, containing the points of Equity determined in the High Court of Chancery, from the year 1689, to the year 1801,—Bridgman's Analyti-

cal Digested Index of Cases, and the supplemental volume. These are to be used only as *indices*. From abridgments and digests it has been often and justly observed no extensive learning can be acquired. They are blind leaders of the blind, and not to be resorted to as repositories of useful knowledge.

Precedents should be taken, and common forms committed to the memory ; but the effect and use of them should be well understood, or they will be improperly applied. The writer would feel a peculiar pleasure in recommending a work of precedents in conveyancing, if he knew of any adapted to the occurrences of daily practices ; but unfortunately there are none. The last, and perhaps the best work on this subject is Barton's. This knowledge must be gained by practice, and by passing a few months in some respectable gentleman's office, and copying and committing to memory his most useful manuscript forms. Common precedents suit common practice only.

The student should, by an enlarged and comprehensive understanding, be able to form precedents for his own use. This he may easily do, if he is attentive ; and if he will not be attentive, he should not be an attorney. I have seen a set of precedents which embrace so many subjects, that the student, if he had a copy of them, would seldom be at a loss to prepare draughts of any kind. The forms wanted would generally be found, but, if not found, he would, from studying the structure and style of these forms, easily prepare clauses or trusts suited to the intentions of his clients. It is hoped that these ingenious forms, which were drawn by one of our most able conveyancers, will, ere long, in compliance with the wishes of those who have seen them, be presented to the public : the gentleman to whom they belong, permits any of his pupils to copy them.

The student should make himself most intimately acquainted with the practice which is likely to be the most useful. If he intends to establish himself in London as an agent, he should

spend some time in the office of an eminent special pleader : and if he purposes practising in the country, he is recommended to pass two or three terms in a respectable agent's office, and be at least one year with some very eminent conveyancer. He will undoubtedly derive very great improvement from such attendance.

Though the books of practice are very accurate, the rules contained in them are not strictly attended to by respectable agents. Many are disregarded for mutual accommodation ; and none of the London attornies, except men of infamous character, who are well known and guarded against, think it honourable or just to take advantage of formal inattention or errors : if they did, the ignorance and misconduct of clerks, and persons employed in the drudgery of the common law practice, would be daily productive of vexation, loss, and disappointment.

From an extensive knowledge of theory, and the common methods used by attornies, which, if the clerk has been industrious, he will have acquired, he will be able easily to account for

the learned and improved mode of transacting business by those eminent special pleaders, or conveyancers, whose instructions he will receive.

The custom of placing young clerks in the offices of special pleaders and conveyancers has already been introduced; and it is sincerely to be wished it may be deemed necessary by the parents and guardians of every clerk in this kingdom. The additional expense which this may occasion, it is hoped will not be an obstacle to its adoption. A small part of the fortunes of most of the young men to whom this advice is addressed, will be sufficient to procure them such an advantage; and except the sordid and illiterate, I conceive no one will consider money expended on an attorney's education, misapplied.

The young lawyer, if resident in London, will, of course, very frequently attend our courts of justice; and clerks in the country should never omit to attend the assizes and sessions. When at the assizes they should diligently regard every cause that comes before the court; from the most trivial, something may be learned; and time will, by this

means, be much more advantageously employed, than in the idle sports, and sauntering, in which many of our youth indulge themselves, when they might be receiving instruction. Even from *undefended* causes, the law of evidence may be practically conveyed to the student ; and an acquaintance with this branch of our law is essentially necessary. If an attorney is deficient in his proofs, in a cause, or a prosecution, and deficient from ignorance and inattention, when evidence might and ought to have been procured to establish the interest of his client, or to accomplish the demands of justice, to the disquiet of his own mind will be added the censure of the public.

A list of the causes should be procured, with the names of the plaintiff's and defendant's attorneys ; and when a cause of importance is determined, let him make a note of it, of the manner in which the evidence was produced, of the facts established, and of the cases relied on by the counsel ; and he will discover, on reference, which cases apply, and which are inapplicable to the disputed points.

Irrelevant cases are sometimes referred to by the counsel, but more frequently in compliance with the wish of an illiterate attorney ; and causes are sometimes lost, or, at least, when great damages are sought for they are not given, from attorneys rashly insisting that their counsel shall pursue, contrary to their better judgment, an improper method in the conduct of the client's cause. One question, imprudently put to a witness, often considerably injures a client.

I particularly recommend an attention to the business at the assizes, as much of the law of evidence may be learned there ; but the student must not place implicit reliance on *Nisi Prius* cases, because, if he does, he will find himself often deceived. Assize decisions may be questioned and overthrown : whenever, therefore, a point of law apparently new is decided, he should, on his return home, look into books and reports ; and, if it is really new, inquire from the attorneys employed, whether the assize decision was abided by, or whether the case was compromised. From the reports of cases argued in the King's Bench



and Common Pleas, he will find what decisions have been over-ruled, and the reasons and authorities why the assize determinations were not relied on. Lord Clarendon frequently lamented that he did not ride the circuits, and observes, there is a very good and necessary part of the learning of the law which is not so easily obtained any other way\*.

Attendance should occasionally be given at the crown bar ; but the management of crown law proceedings, except as to indictments, does not require a profound knowledge of the law : it is comprised in a few volumes ; and the cases relative to them are more easily understood than those on civil suits.

A knowledge of the rules of practice at the quarter sessions, which an attorney of extensive business should be acquainted with, may be acquired by personal attendance. Useful information, on this head, cannot be obtained from books. The practice of quarter sessions is not the same in some counties as in others. Attor-

\* Clarendon's Life, fol. I. 15.

nies should procure the orders of the court for those counties in which they practise : in many, they are printed and given to the profession by the clerk of the peace.

Attornies thus educated, and sedulously attending to their duty as students and practisers, will certainly be of great advantage to society ; and the inferior department of the law will, by such means, be filled with men honourable and learned, whose good conduct and knowledge will ensure them that respect which has of late been too generally withheld from this branch of the profession.

ON

## PARLIAMENTARY BUSINESS.

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IF the student has an opportunity of seeing parliamentary practice, he should pay minute attention to every proceeding connected with it. In bills for making new roads, railways, or canals, inclosing waste lands, selling entailed estates, &c. which may, during his clerkship, be conducted by his master, every notice that is given, and precaution that is taken, relative to the proofs before the committees of each house, should be committed to paper. And, in bills upon which the judges are consulted, the proceedings cannot be too particularly attended to.

We have no work which clearly prescribes the duties of a solicitor in conducting bills through

parliament ; the necessary information can only be acquired by practice. The books which have been written on this subject are worthless productions : the information contained in them is incomplete, and in many points erroneous.

In parliamentary business, mistakes of a *pro forma* nature cannot be rectified without very considerable expense and delay.

The bills in which attornies are commonly employed, are those of the above description ; and as they are in almost all cases drawn by them, the greatest care should be taken, that the clauses are so framed as to effectuate the intentions of the parties interested, and not to cause an opposition. If every person's interest is considered, the clauses properly worded, and the formal part of the business has been duly attended to, it may be foretold what will be the event of an application to parliament. If opposition is threatened or expected, on account of conflicting interests, means should be devised to reconcile them before any great expense is incurred.

With the assistance of a member of parliament, who will take the trouble of transacting the formal business, a solicitor seldom finds it difficult, unless there is an opposition, to pass a bill through the house of commons ; but when it has been read there a second time, the fees are due ; if, therefore, he should not be able to prove, before the committee of the house of lords, that every thing has been done which it was his duty to attend to, and the further progress of the bill should thereby be finally stopped, or postponed till another session, though the expenses incurred must be paid by his clients, the disappointment to himself will be very unpleasant.

The committee of the lords, I believe, acts discretionally ; but it is seldom that they depart from certain established regulations : and in every respect the standing orders of the house are strictly attended to.

## ON THE OLD COURT HANDS.

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THE student cannot employ a small portion of his time better, than in learning to read the old court hands, by which he will be enabled to decypher very old deeds and charters. A knowledge of the characters may be easily acquired ; but to read with facility, he must be acquainted with the abbreviations most commonly used, when legal proceedings were carried on in those hands.

The difficulty of understanding these abbreviations is increased by the introduction of many barbarous words, with Latin terminations, to represent ideas which could not be accurately conveyed by the pure idiom of classical language.

In our old deeds, even in English, different words are frequently expressed by the same abbreviation, which, for a short time, will puzzle the student, but he will, by practice, and by observing the tenor of the sentence in which they are introduced, become acquainted with their signification.

Arbitrary signs are injurious, not only in the legal, but in other professions. Physicians' prescriptions, badly written, and with absurd contractions, sometimes produce mischief, especially if the preparation of medicines is left, as it often must be, to illiterate men.

There are several law hands, in which deeds were engrossed in the fifteenth, sixteenth, and the beginning of the seventeenth century, which are not now used, and which can only be correctly decyphered by studying the original deeds: but an acquaintance with those alphabetical characters and abbreviations, which are inserted in Wright's book, and perhaps other publications of a similar kind, will greatly assist the student

to read any writings which may come before him.

Some words, and parts of words, in many ancient deeds, are expressed by flourishes alone, which bear no resemblance to the letters, and these can only be understood by reading old records, and by observing the relation which such uncertain words have to those which immediately precede and follow them. But, by a very little attention, the student will acquire this kind of knowledge, as there is a greater uniformity in the structure of ancient deeds, than in those of the present day, in which the increase of acts of parliament, and the introduction of abstruse niceties into our jurisprudence, have rendered special and unusual clauses, on particular occasions, necessary to be inserted.

Abbreviations used in the records and legal proceedings of our courts, will be understood by a reference to Wright's Court Hand Restored, in quarto. To this publication is affixed a short glossary of old Latin words, not explained by any other author. The student should consult this,



and the several glossaries of barbarous Latin and other obsolete terms, which have been printed in this kingdom, particularly those by Spelman,—Dufresne,—and Kelham,—Termes de la Ley,—the Norman Law Dictionary,—Jacob's Law Dictionary, by Mr. Tomlins,—and the Law French Dictionary, to which is added, the Law Latin Dictionary. Of this last named work, the part relative to Law French will be useful; the other, concerning barbarous Latin words, is of little value, as the English is placed alphabetically before the Latin, and consequently the Latin terms cannot be found by reference.

Almost every ancient record, and indeed some law books, which it will be proper occasionally to consult, are written in the old Norman-French, or Law-Latin. To attain a knowledge of these languages, very little attention will suffice. Blackstone observes, and it will appear evident to all who are acquainted with the language, that the Norman-French\* differs in its grammar and or-

\* Com. III. c. 21.

thography as much from the modern French, as the diction of Chaucer and Gower does from that of Addison or Pope: and he apprehends, an Englishman, with one week's application, would understand the laws of Normandy, collected in their *grand coustumier*, as well, if not better, than a Frenchman bred within the walls of Paris.

The Law Latin, which succeeded the French, and continued in use a great length of time, will, by the aid of glossaries, be easily understood, without previous application, by any one acquainted with the rudiments of the Latin language.

That a knowledge of the old court hands and Norman-French have been neglected by the profession, is to be regretted. There are attornies who have not been at the pains of making themselves acquainted with this kind of learning, though they cannot without it read indentures of fine, or exemplifications of common recoveries, passed so lately as the reign of Geo. I. and yet it is essentially requisite that they should, as such muniments pass through their hands every day.

Indeed, without this knowledge, causes relative to manors, demesne lands, tithes, moduses, &c. cannot be conducted with advantage to a client, or satisfaction to an attorney.

Every young student should pay particular attention to this subject ; or he will have cause to lament, that from unpardonable negligence in his youth, he is ignorant of those things with which a respectable practiser should blush to be unacquainted.

## ON THE

# LATIN LANGUAGE.

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AMONG attornies, even of the present day, the young student may, perhaps, meet with some who do not think any acquaintance with the Latin language necessary. Every one conversant with our laws, will be greatly surprised and displeased, that professional men should be of such an opinion; surprised, because he will know, that without some knowledge of this language many useful books on our laws cannot be understood; and displeased, not only that there are attornies so pitiably ignorant, but also, lest their observations may have such weight with inexperienced youths, as to cause them to neglect this valuable part of education. Gramma-

tical knowledge was once indispensably necessary, and without it, even now, an attorney cannot properly conduct his business. There are many cases in the old reports, where writs have been abated, and proceedings vitiated, from the omission of a single letter. From these reports, indeed, I might produce innumerable examples in confirmation of my assertion. Even in modern times, we frequently hear cases argued, which, without some acquaintance with the rules of grammar, cannot be understood.

Burrows has reported a decision, where a youth was not permitted to be bound an apprentice to his father, a surgeon in London, because he did not understand the Latin tongue : a similar regulation would be of service in our profession. They who consider the knowledge of Latin unnecessary, should never be intrusted with the education of attorneys' clerks : such men do not themselves possess valuable information, and are therefore incapable of communicating it to others.

The fallacy of an opinion so repugnant to reason, will be manifest by a reference to Blackstone's Commentaries, or Coke on Littleton. There are, in these books, upwards of two hundred pages, which, as they relate to the law of this land, cannot possibly be understood, without some knowledge of the Latin language ; and many cases, in modern times, are determined, in which the counsel and the judges, in their arguments and opinions, make use of old maxims and rules of law, in the Latin language, which are not translated ; and such cases cannot be understood, unless the import of those maxims is known.

These observations will, I hope, convince the student, that some knowledge of the Latin language is essential to an attorney, and that they who support a contrary opinion, are equally unfit to advise or to teach him.

**ON THE STUDY**  
**OF**  
**THE CLASSICS.**

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**BEFORE** I proceed to recommend the study of the classics, I must be indulged in making a few observations on the practice of novel-reading. When I consider how many promising young men have been irreparably injured by this pernicious habit, and how useless are the studies which I recommend, unless this powerful counteraction be removed, I feel it my duty to introduce the subject.

The idle habits which the perusal of novels produces, are so subversive of that close attention, and deep reflection, which legal and classical studies require, that the best inclinations are

not proof against their influence. This evil is at first scarcely perceptible, and thus many are betrayed into it; but let me warn every youth to guard against its first approaches: his time is too precious to be wasted; the professional honours to which he aspires demand his constant pursuit; and upon the proper employment of the present moment depends his happiness or misery in later life. Nor are the ill consequences of novel-reading merely negative: for many of these productions are licentious, and while they amuse the fancy they deprave the heart. Even the more innocent inflame those passions which are fatal to our peace, and fill the imagination with such false views of life, as the painful experience of many years cannot fully efface.

Trusting that the good sense of my readers will render any further remarks upon this topic unnecessary, I recur to the subject of this chapter.

It will not be possible to devote much time, during clerkship, to the study of the classics; but as intimate an acquaintance with them should



be formed, as is compatible with a due attention to other things : nothing tends more effectually to strengthen the memory, improve the mental faculties, and accustom youth to reflect with advantage.

Young men of the present day have in general but a very superficial knowledge of the writings of the ancients. They read them as a task, and neglect them whenever they can do it with impunity. When riper years have improved their judgment, this early prejudice continues unsubdued, and too many quit school or the university with the determination to read no books which require much thought or application ; thus wilfully denying themselves the most sublime pleasures derived from intellectual pursuits.

If classical learning has been neglected, attention should in the first place be paid to the Latin Grammar, particularly the Syntax ; after which, with the aid of a Dictionary, Ovid's *Metamorphoses*,<sup>10</sup> or Cæsar's *Commentaries*, will be read

<sup>10</sup> It is remarkable that our author who so justly con-

without difficulty ; and, while the student is improving his knowledge of the language, he will be as much pleased with the beautiful conceptions of the one, as he will be instructed with the historical information and reflections of the other. After these may be read Terence, and the works of the learned and eloquent orator of Rome, whose treatises *De Officiis*, *De Oratore*, *De Amicitia*, and *De Senectute* are truly excellent. When these have been read with more than common attention, the student should turn to his inimitable Orations, some of which he will perhaps be inclined to commit to memory. Quintilian, to whose judgment the greatest deference is due, has said of Cicero, in the comparison which he makes between him and Demosthenes : Quare non immeritò ab hominibus ætatis suæ regnare in judiciis dictus est : apud posteros verò id consecutus, ut Cicero jam non hominis, sed Eloquentiæ nomen habeatur. Hunc igitur

demns novels because they are " licentious," should select *Ovid* for his student.

spectemus : hoc propositum sit nobis exemplum. Ille se profecisse sciat, cui Cicero valde placebit\*.—“ It was, therefore, not without reason that by his contemporaries he was said to be the sovereign of the bar ; but with posterity his reputation rose so high, that the name of Cicero appears not now to be the name of a man, but of Eloquence herself. Let us therefore keep him in our eye : let him be our model :<sup>11</sup> and let the man who has a strong passion for Cicero know, that he has made a progress in study.”—Very few, if any, more sensible and elegant Letters are to be found than those of Cicero. They

\* Quint. l. x. c. l.

<sup>11</sup> We do not think this quite so clear. The subjects of controversy in modern days ; the regulations by which it is governed ; the tribunals before which it is conducted ; the dispositions and character of the people are all so different from what they were in the days of Cicero, that we suspect an address to a modern Court and Jury, framed precisely on the model of any one of Cicero's orations would have, perhaps, a ludicrous reception. We do not however hesitate in approving the most reverential regard for the eloquence of Cicero.

exhibit him in the most amiable light, not only as a philosopher and a scholar, but as a sincere friend and tender kinsman. They are replete with sentiments becoming the dignity of a man, and breathe a spirit of patriotism and affectionate regard most admirable and pure. It appears from Quintilian, that Demosthenes left some epistolary writings; but he adds, that between those of Cicero and the Grecian orator, there was no comparison. The Letters of Pliny well deserve attention; but there is a stiffness of style throughout them, which renders them less agreeable than those of Cicero.

After the above, it will be proper to read Quintilian, the greatest of the Roman critics: his advice on the practice of the bar is in many instances applicable to attornies. The historians, Sallust, Livy, and Tacitus, should be read as soon as the student is capable of relishing their exquisite beauties. On Sallust and Livy, Quintilian confers the highest praise: he considers the one equal to Thucydides: and he asserts, that Herodotus would not disdain to be compared

with the other. Sallust was thought, by Sir William Jones, to be a perfect model as an historian. Of the elegant conciseness of his style, the account of Catiline's conspiracy, and the comparison between Cato and Cæsar, are sufficient proofs. With this writer, the student should read Cicero's orations against Catiline.

Tacitus is an author whose works abound with good sense : his observations on human nature would reflect honour on the wisest of men. His style, like that of Sallust, to a youth not well versed in the language, will perhaps appear difficult to construe ; but let not that deter him from attempting the perusal of so valuable an author. The political remarks of Tacitus, and his reflections on men and manners, he will greatly admire ; and sometimes he will meet with enchanting pieces of eloquence. A passage more pathetic or more beautiful cannot be found in any other historian, than that in the last page of his Life of Agricola, where he makes a short apostrophe to the manes of the deceased.

Virgil and Horace require no recommenda-

tion : they are of course the companions of the student. The excellencies of the former are perceptible to every eye ; and the gay sentiments, the terse expressions, the delicate wit, and fine manly sense of the latter, soon make him win his way to every congenial heart. Nor should the student omit to read the Satires of Juvenal and Persius. Juvenal is by some thought improper to be put into the hands of youth ; but notwithstanding this opinion, I venture to recommend him to the perusal of the classical scholar : he is certainly in some parts indelicate ; and in his sixth satire he is culpable for the censure which he passes on the female sex ; but his writings abound with virtuous maxims, and just observations on mankind : and when his Satires were written, the vices of his country called aloud for free and energetic reprobation.

It is not contended that a knowledge of the Greek language is absolutely necessary to an attorney ; but I earnestly recommend the student to read, during his clerkship, the Testament, Xenophon, Demosthenes, or at least the Orations se-

lected by Mounteney, and Clarke's Homer. After he has read these, if he is desirous of improving his knowledge of the Greek language, he may do it in more advanced life, without much difficulty. A further progress in the study of Greek it will be prudent to suspend till he has acquired an extensive knowledge of the law, and has more leisure to devote to ancient literature.

I am aware, that by recommending an attention to so many of the classics during a clerkship, I shall excite surprise ; but I am convinced that more than these might be attended to, without neglecting the study of the law. Let it, however, be always recollected by the young clerk, that not only the classics, but every other subject, must be pursued in subordination to his professional studies : they claim his most particular attention. He may, like Hume, be more enchanted by Cicero or Virgil, Demosthenes or Homer, than by Littleton or Coke ; but he must not let the former gain so great an ascendancy over his mind as to induce him to neglect the latter. Lest this should be the consequence, he

must resolve that the time which passes in the study of the authors of Greece and Rome shall not exceed a few hours in the week ; in which case I advise him not to confine himself to stated periods : on the contrary, unless prudence forbids, let him seize a convenient opportunity whenever he feels inclined to prosecute his task with ardour. He will accomplish more in a few hours by such means, than by a week's unwilling slavery. But, even if his attention, his memory, and his imagination were at his command, it is not possible for him to observe particular periods for his own employments. Attornies' clerks are not permitted to use their discretion in the application of their time. They must dedicate to study the moments which are spared from the fulfilment of their duty in the office ; making their wishes comply with circumstances, and not the latter subservient to their will ; or their progress will be interrupted, and their hopes ultimately defeated, by obstacles which cannot be removed. They must allot to exercise and amusement only as much of their time as is ne-



cessary to their health ; and they must diligently employ, in some way or other, every moment to the utmost advantage.<sup>12</sup>

<sup>12</sup> I confess my surprise at the omission in this place of the names of some of the distinguished classics and scholars of Great Britain. In addition to *Shakspeare*, *Milton* and *Dryden*, an English library will furnish the richest materials either to strengthen or ornament the mind. The days of Elizabeth and Anne abound with writers of the first eminence, either for argumentation, force and precision, or the graces of elegance. The English forum has its Orators as worthy of imitation as Cicero. There is something in the profession of the law, which no other occupation possesses. Its grasp of knowledge is universal. There is nothing which may not be tributary to it ; there is no species of information which may not be useful, inasmuch as it extends over and pervades all the concerns of man in society.

The lawyer must not only know what is right, but be able to convince others of it. To do this, he must take man as he is, not merely a deliberating, reasoning animal, but compounded of passions, prejudices and various interests ; and he must know how to assail and command them all. If he would unite the powers of persuasion with a knowledge of the law, he must cultivate *Eloquence* ; he must refine and improve his mind by studying the most perfect models of managing and ruling the feelings and passions of men. He must enrich himself with elegant and illustrative imagery ; he must learn to touch the chords

of feeling with a master hand. Let him study, as lessons of instruction, not as amusing pastimes, the pages of *Shakespeare*, *Milton*, *Dryden*, &c. How much of the reputation of *Erskine*, *Curran*, and other British and Irish Orators, is due to this study is apparent in their speeches. The student who intends to become an advocate, should exercise himself constantly, not only in reading the most finished compositions, but in writing himself. He will thus acquire a wide range and selection of language ; and the command of a correct, easy and elegant style. He will be able to regulate the choice of his words, the construction and arrangement of his sentences, and the best disposition of his subject, arguments and illustrations. Extempore speaking is nothing but rapid composition, and to compose rapidly with ease and propriety will become habitual only by frequent use.

ON  
ATTAINING A KNOWLEDGE  
OF  
THE LATIN LANGUAGE.

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NOTWITHSTANDING I recommend the study of the classics, I am aware that some youths are articled without having been instructed even in the rudiments of the Latin language. It is to be lamented, that any parents should place their sons at the desk of an attorney, without giving them that degree of instruction which is requisite for the situation. Since, however, this is the case, it is necessary that I should point out such methods as appear best calculated to remedy the evil.

The love of novelty should not be indulged to excess. As soon as a little progress is made in a new language, we are disposed to quit the easy for the more difficult path, and to push forward with more zeal than judgment; but cool reflection will convince us that a very minute attention to the elementary parts of all branches of learning, is indispensable; and if these are passed over without a perfect knowledge of them, our future progress will be retarded, if not entirely prevented. To young men the labour of acquiring elementary knowledge is always irksome; but when that knowledge is obtained, they may excel in proportion to their industry. I fear there are not many who will pursue my directions so closely as I could wish: they who are free from the restraints of authority can seldom be persuaded that painful study will be compensated by its effects; and if the labour of the office is performed, the attorney too often disregards the mental improvement of his clerk.

A knowledge of languages may be acquired even in advanced age. Julius Scaliger knew not

even the letters of the Greek alphabet when he was upwards of forty years of age. Ogilvy, the translator of Homer and Virgil, knew little of Latin or Greek, till the age of fifty. Dr. Milner, Dean of Carlisle, was employed as a weaver until he was nineteen. Gifford, the Juvenal of the present age, was utterly unacquainted with the Latin language until he reached his twentieth year. Roscoe, whose name has been mentioned before, was, at the commencement of his clerkship, quite ignorant of the rudiments of Latin; yet he obtained, during that period, an intimate knowledge of the Italian and Greek languages, as well as the Latin. Many more examples of this kind might be placed before the student, but the success of these gentlemen may serve to stimulate him in his pursuits; and he may be assured, that all the difficulties which at first present themselves will be surmounted by diligence.

From Ascham's Schoolmaster, and Knox on Education, the young scholar will derive considerable instruction; in addition to which, I shall

here subjoin some plain directions, which I am confident he will find of practical utility in the prosecution of his intention.

The scholar should commence with the *Eton Latin Accidence*, in which he should exercise himself, by using Morgan's Grammatical questions. When he is perfect in the *Accidence*, he should read Loggon's *Cordery*, particularly the two or three first chapters : a vocabulary is added to the book, with the method of parsing the different parts of speech. After this he must again look over the *Accidence* and learn the *Syntax*, which is construed verbatim towards the end of the grammar. When the *Syntax* is well understood, eight or ten more chapters from the *Cordery* should be construed, to every word of which he must be careful to apply the rules of *Syntax* properly. He should be very particular in remembering the rules of concord, and the distinctions between the different parts of speech.

He may now read Whitaker's *Latin Fables* ; and, if he is fortunate enough to have any friend who is willing and qualified to assist him, he

should write Latin exercises from the *Exempla Minora*.

When he is perfectly acquainted with the Syntax, the Cordery, and Whitaker's Fables, he should construe and parse several chapters in the Latin Testament. He will then be able to read *Selectæ è Profanis Scriptoribus Historiæ*, or *Monita et Præcepta Christiana*.

Self-taught scholars are generally incorrect in their pronunciation : to remedy this, strict attention should be paid to the Latin prosody at the end of the Eton Grammar, and to a recent work by Dr. Carey on the same subject, in which there are tables to instruct them to pronounce in the customary manner nouns and verbs in their cases and tenses. The scholar may now proceed to the books mentioned in the preceding chapter, beginning with Cæsar's Commentaries.

The directions given on this subject are the best I am acquainted with ; the student, by attending to them, will undoubtedly become master of the language ; and lest he should be led into errors by purchasing Keys, Easy Guides,

Sure Ways, &c. I assure him, that I have seen many books of this description relative to different\* languages, none of which deserve notice, and from such works useful learning cannot be obtained.

If the young clerk is desirous of learning the Greek language, he should commence with the Eton Greek Grammar, occasionally referring to Bell's Grammar, to explain and illustrate many minutiae relative to the language, which are not noticed in the former. When the Accidence and the Syntax have been sufficiently attended to, he should read the Greek Testament, beginning with St. John : the Epistles are perhaps the most difficult part. The characteristics of the different conjugations must be learned very perfectly, or the student will not be able to construe the most easy verses in the Testament.

I do not approve of books which are written

\* Mr. Bagley, of Shrewsbury, has published a Grammar of twelve languages, on twelve or fourteen sheets of paper, in which the most difficult are attempted to be explained : but I am of opinion, that neither the learned nor the unlearned can gather any information from them.



solely to ease the progress of learning, unless *some essential benefits* are likely to arise from them : but as the industrious clerk must attend to many other employments which require the exertion of his mental faculties, I recommend him to use Dawson's Testament-Lexicon, by the assistance of which he will read the Gospels with very little difficulty. He may then proceed to Xenophon, Lucian, Homer, or Demosthenes. Ward's Key to Xenophon, and Patrick's Clavis Homerica, may be allowed to a self-taught student.

Of Demosthenes' Orations Dr. Leland has written a very good translation ; and though it may be allowed for one or two orations, yet if the student makes use of this, or any other translations, before he is pretty well acquainted with the nature and idiom of the Greek, he will never make any great proficiency ; and by having the path to knowledge so clear and open as translations render them, his learning will be superficial, and his faculties will not be improved so much,

as by surmounting, without their assistance, the difficulties he will meet with.

They to whom this chapter is particularly addressed will perhaps observe, that a deep knowledge of the law cannot be acquired in conjunction with the study of the Latin language. *Sed non satis perspiciunt quantum natura humani ingenii valeat : quæ ita est agilis et velox : sic in omnem partem, ut ita dixerim, spectat, ut ne possit quidem aliquid agere tantum unum : in plura vero, non eodem die modo, sed eodem temporis momento vim suam impendat\*.*—"But they, who reason in this manner, are not sufficiently acquainted with the nature of the human mind; which is so active, so quick, and, if I may say it, so omnipotent, that it is almost impossible for it to be confined to a single object; but it can apply its strength to several, not only in the compass of a day, but of a moment." Even if the truth of this observation were doubtful, rather than lose the advantage which every lawyer derives from this branch of learning, it is proper to

\* Quintilian, i. xi.

attend to it, though legal studies are for a time neglected. Youth is certainly the period in which learning, or at least the rudiments of learning, should be acquired; and if young men defer gaining knowledge so essential as this till the expiration of their clerkship, when are they to acquire it? If ignorant of Latin, and professionally consulted on any difficult point of law, what will be their feelings? They must apply to counsel, when perhaps the case which they lay before them is unworthy any counsel's attention, and their client may not be able, without great inconvenience, to defray the expenses thus unjustly incurred; or they must condescend to ask the advice of some professional contemporary, who from closer attention and a proper education, is able to advise them. And perhaps the case may be so trivial and clear, that their friend will be astonished, and if an illiberal man, will take every opportunity of exposing their ignorance.

From what has been said, it is hoped no one will suppose that an attorney should rashly decide on all the intricate cases which are laid before

him : the advice of men whose industry and education have rendered them superior in knowledge, should in such cases be resorted to. My intention is, to convince the young clerk, that it is his duty to be deeply versed in the science of the law, which he cannot be if contented to remain illiterate. Nor would I have it understood, that I think attornies should not, in points of less difficulty, consult one another : in many cases, the advice of contemporary attornies may be very useful, and there are few so illiberal as not to give their assistance.

ON

## SHORT-HAND WRITING.

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TO take notes of cases, and on many other occasions, greater expedition is required than can be attained by any writer of a common running hand ; and it will therefore be of service to learn one of the modern systems of short-hand. Among the many publications on this subject, Gurney's, Mavor's, and Richardson's are most generally approved ; but I would recommend Rowe's, in preference to any of these : his very short system appears to be as useful as any of the others ; and it has this advantage, that all the characters slope one way.

There have been some authors who have disapproved of this useful art ; and, among others, Mr. Bridgman, in his *Reflections on the Study of the Law*, thus condemns it :—" Some writers on this subject strongly recommend the practice of *short-hand writing*, but there are many objections to this expeditious mode of recording the business of the courts. We should rather recommend the student, if he has a command of hand and can write *currente calamo*, to trust to the swiftness of his pen, and the help of abbreviations ; for the short-hand writer, in his attention to take down *every word*, is apt rather to devote himself to scribbling the text, than to enter into the spirit of the case ; and, perhaps, before he has leisure to transcribe his short-hand notes into his common-place book, he has wholly forgot, and utterly lost the glow of the argument, and the expressive fire of the speaker.; besides, as short-hand writers, in using their characters, attend more to sound than syllables, the most elegant scholar will find that this practice will insensibly affect his orthography and his spelling, even in

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the common occasions of ordinary epistolary intercourse." How much a man would transcribe in a given time, who can write *currente calamo*, according to Mr. Bridgman's acceptation of the words, I do not know ; nor do I see any just reason to suppose, that a short-hand writer (if he has common sense) will devote himself to scribbling the text, rather than enter into the spirit of the case. What is meant by this wholly forgetting, and utterly losing the glow of the argument and the expressive fire of the speaker, before he has leisure to transcribe his short-hand notes into his common place book, I cannot clearly understand ; nor do I believe that this practice of attending more to sound than syllables, will insensibly affect the most elegant scholar's orthography and spelling, even in the common occasions of epistolary intercourse.

If this last objection is justly founded, surely the spelling of one who uses abbreviations, of an antiquarian, or of a scholar frequently writes and reads in different languages, would be very incorrect. They who adhere to Mr. B's advice, will

avoid a certain good for fear of a possible inconvenience. <sup>13</sup>

<sup>13</sup> We have known several gentlemen of the Bar, who have taken the pains to acquire short-hand writing, but never knew it of any practical use in the profession.



ON

COMPANY.

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THE truth of the old maxim, *nosciter e sociis*, cannot be denied, though some instances may be adduced to the contrary. Mankind will undoubtedly form their opinion of the morals and attainments of the young lawyer from those of his companions ; consequently, few things can be of greater importance than an attention to their characters. If he selects for his confidential friends the libertine, the dishonourable, the malevolent, the trifler, or the uneducated, among such he will himself be classed. He should therefore associate with those only who are distinguished for good sense, good morals, urbanity of man-

ners, and an ardent desire for the attainment of knowledge. If opportunity offers, he should also form an acquaintance, and discuss points of law, with some ingenious and sensible youth, employed in studies similar to his own; and by such an acquaintance he will at once be delighted and improved.

Some of our most eminent lawyers have had recourse to this method. Lord Mansfield\*, while he was in the Temple, had regular meetings with other students to discuss legal questions: they prepared their arguments with great care; and the noble lord found many of them useful to him, not only at the bar, but upon the bench.

The companions of a student should be few: if they are numerous, he will probably be induced to sacrifice more time to friendship and pleasure than is consistent with his professional duties, and his hopes of honourable distinction. <sup>14</sup>

\* Butler's *Horæ Jur.* 202.

<sup>14</sup> Connected with this part of the subject we would recommend to students the establishment of *Law Societies*,

which should be attended with the utmost diligence, order and attention ; not as a place of amusement but as a school of instruction. A facility may here be acquired in investigating and tracing points of law ; in examining and comparing authorities, in arranging and managing an argument, and finally in delivering it with ease and propriety. All this too is enlivened and stimulated by a spirit of emulation and pride, without which excellence cannot be attained in any pursuit.

ON

## CONDUCT.

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A MEMBER of a learned profession should possess, not only the education, but the manners of a gentleman : he is otherwise but imperfectly qualified to sustain his part in public. The most illiterate person can judge of his deficiencies, and from envy of his superior intellectual possessions, will ridicule his ill-breeding, and raise a general prejudice to his disadvantage wherever he may appear. And, it must be confessed, that where the ill manners which provoke this censure, spring, as they commonly do, from a low, false pride, which affects to disdain those accomplishments wherein the ignorant may be

equal to the wise, its painful consequences are deservedly incurred. It is, moreover, a species of folly which meets with no quarter from the world, its cause so obviously being contempt of public opinion.

Politeness, says Lord Chatham, is *benevolence in trifles*. This then is all I require of the student. It is a quality wherein every man should be ashamed to be deficient, whatever may be his station in the world ; but especially the scholar, whose learning is of little value, if it hinders him from performing those social duties, of which it enables him the better to understand the nature, and appreciate the excellence. By acting agreeably to the above definition, he will gradually improve his heart and polish his manners. Envy will find nothing to censure in his conduct, since ostentation and the love of praise are not his motives. His behaviour will be as free from the follies of Lord Chesterfield's school, as his mind is superior to the vices of his lordship's system. And even, if by accident the punctilios of the polite profession should be violated,

the goodness of his intention, and the powers of a cultivated mind will effectually protect him from derision.

Agreeable manners, founded upon this principle of benevolence, will not permit that *affectation of gallantry* which some young men display in the company of the other sex. So glaring is this folly, that he who can observe it without despising that something worse than vanity, which gives birth to it, is as devoid of the qualifications necessary to a scholar, as he is of the feelings natural to a man. Such persons, therefore, I shall not waste my time in vainly endeavouring to reclaim : it is not for their sake that these pages are written. But as the prevalence of bad example may have induced others to countenance such abuses, while their better nature condemns them, I have thought it right to express my sentiments on the subject. If young men value the fame, interest, and happiness, either of themselves or others, they will avoid a practice, from which the pleasure they may derive is vain and

transitory, while the evil consequences which frequently ensue, are great and permanent.

I wish not to exclude my young friends, from an acquaintance with virtuous women, or to deter them from paying that attention to them which is consistent with *true* politeness. The coxcomb, and the flatterer, are alone the objects of my reprehension. The society of the most amiable, if not the most sensible of human beings, if properly enjoyed, will be productive of advantages to the head and heart which no other company can afford; and which are not to be conceived by those whose early years have not been spent within the reach of such salutary influence.

Young men should carefully guard themselves against forming any attachment, even upon honourable principles, till years shall have matured their judgment, and a proper course of study supplied them with knowledge sufficient to enter on the world and to transact their personal business with accuracy. Attachments formed too early in life are commonly of a ra-

mantic nature, and tend to dissipate thought and unhinge the mind, and seldom terminate so happily as lively imaginations are willing to expect. Knox, in his *Liberal Education*, has written a sensible chapter on the necessity of preserving the mind free from immoderate affections in the youthful age, in order to arrive at any distinguished degree of excellence; and from this chapter I shall take the liberty of making a quotation:—"And even with respect to a virtuous passion, at a very early age, though it may certainly arise in the most amiable hearts, yet it is desirable, if it is possible, that it may be moderated till a competent share of learning is obtained; for love, like all other strong passions, is tyrannical. Love will not suffer the mind to acknowledge any other sovereign. I am certain, that no lover, who is really what he pretends to be, can give his attention, in a due degree, to study. His application, if he be capable of any, which I think very doubtful, will probably be unequal, desultory, and unfruitful. Let the young man inspect the living world. Who are those who



ultimately make the most honourable figure in it, and succeed to the best advantage, in those professions where merit is allowed to make its way to eminence? Those surely who devoted themselves during a long time to the study of the profession which they practice; not those who were contented with elementary attainments, who precipitately involved themselves in love, and its consequences; and who began the practice of some profession before they had obtained the theory. There are, indeed, always some instances to the contrary; for great genius will break through all obstacles in its ascent to excellence; but, in general, it will be found true, that those who have left their books too early, and involved themselves in strong attachments, much more those who have been embarrassed in the miseries of vice, are superficially qualified in every thing which can claim the name of real knowledge.”<sup>15</sup>

<sup>15</sup> To this chapter upon the conduct and manners of the professors of the law, we would add a word respecting the courtesy, forbearance and respect due from them to each other in their business. To see counsel, in the trial of a

cause, rudely sparring with each other, or indulging in mutual sarcasm and ridicule, is sport to the vulgar bystander, but death to the dignity of the profession. It is equally unworthy to be entrapping one another in little inadvertencies ; and to play a game of small tricks and accidental advantages, wholly beside the merits and justice of the case, or the duty due to the client.

ON  
THE PROFESSIONAL DUTIES  
OF  
ATTORNIES.

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AN attorney should commence his professional labours with the laudable resolution of preventing litigation, as much as possible ; for petty suits are always vexatious, and seldom productive of advantage either to the litigant parties or to society. At the assizes, in general, many causes are tried in the Nisi Prius court, which the attornies on both sides, particularly the plaintiff's, knew in the commencement could produce no good, and must be attended with considerable expense. Actions which are brought on bond or covenant, or relative to important

commercial transactions, or to confirm or acquire a title to real estates, are subjects which deserve attention ; but there are many actions which in the end do not benefit either the attorney or his client, and which it is the duty of attorneys to refer or compromise. In all frivolous suits, which are frequently proceeded in from the obstinacy and deceitful representations of a client, if the result is unfavourable, the attorney is censured.

Nor is it easy for a stranger to ascertain which is the more culpable. The consequences which attend litigation about frivolous assaults, small sums of money, or any subjects of trifling interest, cannot be contemplated without regret and indignation. In such cases the costs, which even the successful client must pay, generally exceed the advantages he derives from his verdict ; and by proceeding with such business, an attorney can neither serve his client, nor increase his own reputation. There are very few general rules to which we ought at all times to adhere ; but, in general, actions of account for slander, seduction, promise of marriage, as-

sault, or contracts relative to the sale of horses and cattle, may, with advantage to both parties, be amicably compromised before they are brought to the assizes.

Matters of account which are brought to the assizes, and indeed many other kinds of actions, are almost always referred by the judges, after the counsel have had their fees, and considerable expenses are thus needlessly incurred. Two sensible men could in such cases easily ascertain the facts ; and the points of law might be stated to counsel, with the arguments of each party's attorney ; and the counsel's decision might be considered final. For this purpose the legislature may, perhaps ere long, think proper to subject witnesses before arbitrators to the punishments which are devised by our law in cases of perjury ; and some other regulations, as to arbitrators and their award, might be made, which would be of advantage to the community. The practice of compromising law-suits by arbitration, would be attended with many advantages.

It is painful to observe men unnecessarily spending that money among lawyers, which they ought to employ for the benefit of their families ; and which is often required by their nearest relatives to procure the common necessities of life. The sums which foolish clients pay in absurd litigation are inconceivable, except to professional men.

In those cases where justice requires that an attorney should be concerned in the conduct of law-suits, every endeavour should be used to insure success to his client ; and his case should be viewed in every possible light. The weak parts of it should be searched into as well as the strong. If the client's own information is relied upon, he should be questioned on the unfavourable, as well as the favourable parts of his cause ; and by this means a better knowledge of its merits will be acquired, and a more accurate opinion may be formed of the event, than by merely listening to a client's own tale. Every one conversant with business knows how prone men are

to misrepresent their affairs, if they think misrepresentation likely to benefit them.

Witnesses, upon whom, from their characters and situations in life, you cannot depend, should be examined, and their evidence taken down in writing ; and at some future time examine them again, and compare their answers with those formerly given. By these means you will see whether they will prevaricate at the trial, and how far you may rely upon them ; and taking the advantages and disadvantages likely to result from their evidence into consideration, whether it will be prudent to produce them. <sup>16</sup>

Briefs should be prepared with as much con-

<sup>16</sup> An attention to these excellent directions would preserve the law from many of the aspersions brought upon it by unworthy members ; who, for a paltry gain, plunge their clients into trifling, ruinous, and sometimes hopeless litigation ; and then strive to carry them through it by the most unjustifiable means. Let every lawyer consider his client, *pro hoc vici*, as a friend throwing himself upon his counsel ; and direct him, not always *by his strict rights*, but by his permanent and substantial advantage ; by that, which under all the circumstances, it is most prudent, and reputable, and beneficial for him to do

ciseness as possible ; and those technical phrases which must be made use of, should be accurately explained. An attorney may learn their meaning and application from his witnesses.

When consulted professionally, a young attorney should not, if he can avoid it, give his opinion hastily ; but consider and re-consider. All the cases in the memory of a well-read man, will not at all times present themselves ; and a little thought may cause an alteration in that opinion, upon which, sometimes, the welfare and property of a client and his family depends.

Attornies should, in the affairs of their clients, observe an inviolable secrecy : if those of eminence were to expose them, we should be overwhelmed with litigation ;—titles might be disputed and destroyed, estates would be lost, and families reduced to distress. Many titles come before a conveyancer, in which blunders of the greatest consequence to their validity have been made ; and if at any time the errors of ignorant men, who have been employed in transmitting them from owner to owner, were to be publicly



known, the present possessor must be ejected, and his property become vested in strangers.

The duties of an attorney, as a conveyancer, demand very great attention. Errors in this department, for which an attorney will have no excuse, may be the ruin of his client. In suits at law, and in equity, a client and his witnesses may deceive him, he may lose his cause, and not be blameable; but in conveyancing, there is nothing to deceive or mislead him, but his own ignorance or negligence.

Abstracts should be examined with critical accuracy; and if a defect appears, its tendency should be duly considered, cases should be referred to, and books consulted; and when this is done, the examination of the abstract with the original deeds should never be dispensed with. I have known erroneous abstracts delivered (in cases where the deeds were covenanted to be produced) which, if relied on, without inspecting the original deeds, would have cost the client several thousand pounds. Attornies of honourable principles will not designedly send incorrect ab-

stracts out of their offices ; but pettyfoggers are often guilty of this practice ; and an abstract is sometimes prepared by a clerk, who omits some parts of a deed which are of great consequence, from a supposition that it is not necessary to notice them.

Where any doubt arises in a solicitor's mind, which studious attention will not remove, it is his duty to lay a case before some eminent counsel, who, from a life devoted entirely to conveyancing, will be competent to advise him. If he neglects this, and an error is detected, the blame will rest with himself.

When a title has been duly considered, the method of transferring the property must be attended to ; and that which will carry the intention of the parties into execution in the most advantageous manner and with the least expense, is to be adopted. Stamps are very expensive : deeds should, therefore, be drawn as short as possible ; but propriety should never be sacrificed to economy. It will be prudent for an attorney to decline transacting business for those clients

(and there are many) who will not trust to his judgment and honour, but must make a bargain, and be told the sum for which their business will be completed, when it is perhaps impossible to estimate the necessary expenses.

Deeds should be drawn with care, and never shortened so as to subject the construction of them to doubt. Established forms cannot be abandoned without risk ; and the extent of that risk should be clearly ascertained before new forms are instituted, or the old are curtailed. An inexperienced youth should never presume to depart from established precedents.

These remarks chiefly relate to the duties of a purchaser's solicitor ; those which belong to the vender's solicitor, honesty and common sense will suggest.

To expose and hold up to censure the conduct of many professional men, would be an easy, but an unpleasant task. On all occasions, a well-educated attorney will shrink from those petty artifices, which some men adopt for the sake of profit, and will not be concerned in any thing

which may tend to injure his own character or degrade his profession. It is not necessary to enumerate the various *low* tricks which every man of much practical information well knows are often resorted to by some attorneys. Among the youths now training up to the profession, I hope there will be found independency and liberality to secure the public from that peculiar kind of oppression which is sometimes practised by this cunning class of our contemporaries, who by various mean contrivances are reputed to have a better acquaintance with our laws than they can justly lay claim to. But however unpleasant it may be, to censure particular practices, there is one so prevalent, so disgraceful, and dishonest, that I cannot pass it over in silence: I mean that of the vender's solicitor introducing into his conditions and contracts, for the sale of estates, a compulsory clause, that the purchaser shall (*whatever may be his opinion of his abilities or character*) employ him to judge of the validity of the vender's title, and to prepare his conveyance-deeds. Thus the solicitor is doubly paid for

duties which are often incompatible ; and the purchaser, after having paid the vender's attorney for perusing his abstract, drawing and engrossing deeds, &c. must, before his own mind is satisfied of the safety of his title, pay perhaps as much money to his own attorney ; and from the vender's solicitor not having done what the purchaser's attorney thinks requisite, additional and considerable expenses may be incurred. What is known to the agent is presumed in many cases, as to titles to estates, to be known to the principal ; and frequently from the situation in which a vender's attorney is placed, he cannot properly discharge his duties to a purchaser. Many other reasons might, if necessary, be adduced to show the impropriety of this practice, which even the attorneys who adopt it attempt to support with no other argument than that of being customary in their neighbourhood ; and if the purchaser disapproves of their conditions, he is not compelled to purchase. It is astonishing that such arguments should be advanced in support of this custom, by men who

ought to blush to obtain business by such means. The condition is in the shape of an agreement, not cognizable as a crime by our penal code ; but it is taking money from a man for services which he does not require, and which he will not depend upon when performed. To reconcile such conduct with honour and honesty, I leave to those who are influenced by it ; at the same time advising my young friends never to be guilty of it, though it should be their lot to practise among those who are.

The solicitors of both vender and purchaser should take care that their clients are not burthened with expenses which it is not their duty to bear. From inattention to this object, not unfrequently, a purchaser pays for deducing a title, and ascertaining facts, which ought to be paid for by the seller ; and *vice versa*. This, indeed, must depend on the agreements entered into by the parties ; but where they make no express agreement, of course it depends on cases decided in our courts of justice.

The Law of Venders and Purchasers, by Sugden, is a very useful work to men in practice, and, in the last year of clerkship, deserves particular attention. In this ingenious publication, all the cases which relate to the subject of which it treats, are referred to, and the author has subjoined explanatory arguments to several which appeared to be of doubtful application.

The advice contained in this chapter will seem of little import to experienced attornies ; but this book is addressed to the inexperienced ; and if it is regarded by them, they may possibly avoid some serious errors, which without these admonitions they might have committed.

ON THE  
RECIPROCAL DUTIES  
OF  
ATTORNIES AND CLERKS.

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THIS is a subject on which I enter with some reluctance. I wish, for the honour of the profession, that articted clerks were allowed to devote more time to study than is generally granted them ; but I presume not to dictate the manner in which an attorney should behave to his clerks. This must depend very much on the circumstances under which they are articted. I am, however, of opinion, that where an usual premium is given, the improvement of the pupil ought to be considered, rather than the attorney's profit.

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A clerk should distinguish himself by industrious application, and a careful performance of those duties which are entrusted to him; he should manifest his obedience by a pleasant and prompt compliance with his master's wishes; he should conduct himself with propriety and politeness to his clients; and strive to promote his interest to the utmost of his power.

In the business of the office the strictest secrecy should be observed; and he should never suffer himself on any occasion to discharge that part of it which is confided to him, in a slovenly or negligent manner, as, by so doing, the gentleman with whom he is articled may sustain an irreparable injury.

Sobriety and diligence will add to his reputation among his neighbours; and proper conduct will undoubtedly be rewarded by the approbation of mankind, and by success in his own practice. His future prosperity in life will depend, more than is commonly supposed, on the manner in which he conducts himself during his clerkship, especially if he practices in the country, and in

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the neighbourhood of the place where he received his education.

The attorney to whom he is articulated will perhaps allow him several hours in a day to study books, and will with pleasure explain those parts, which he cannot clearly comprehend, of the authors which are from time to time the objects of his attention. And on being applied to at proper seasons, he will impart his instructions on any subject, concerning which the clerk is desirous of receiving information. Indeed, if his professional duties will admit of it, and if he is competent to the task, he may perhaps be disposed to communicate, at appointed times, his observations on such points of the theory and practice of the law, as peculiarly relate to the business in which attorneys are employed.

ON

## EXERCISE.

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THE mind and the body reciprocally affect each other and every injury done to either is eventually felt by both. We may flatter ourselves that, as the excessive exertions of the mind are not perceptibly detrimental to the body, we have no very pernicious consequences to dread; but this is an error. The ill effects slowly, but gradually increase; and when they are of magnitude sufficient to alarm us, they generally are so powerful, that all our resistance is ineffectual. That degree of exercise and recreation, therefore, which counteracts those bad habits to which the nature of our employment most exposes us, and calls into use those limbs or muscles which have previously been least

## ADVICE ON THE

is necessary, not only for the preservation of health, but for the real advantage of

the allotted to this purpose should be according to the physical powers of the individual, and his own feelings will probably, on the whole, be his best guide; but he should guard against indulging them too far, and should be slow to suspect, that a profusion of the care of his health is inconsistent with the strictest regard to his professional duties.

Study is delightful to the mind, and means so prejudicial to health as idle people represent it. The total neglect of mental exertion, which the passion for some idle amusement induces, is the true source of the mischief, and the cause of this groundless pre-occupation with the application of the mind to the kinds of exercise most suitable to the purpose of the student, it will be right to his situation. In accordance with the athletic amusements are absolutely counteract the enfeebling effects of

an impure atmosphere and a crowded population. But, as in many places, and particularly in London, it is difficult to find the requisite conveniences, I shall state what I conceive to be the most proper substitutes for those exercises to which I allude, and such as in all cases may be easily adopted. Of this class, brisk walking in the most open parts of the town, rowing in boats, and occasionally, cold-bathing early in the morning, with a walk afterwards, will be found most serviceable : at home, the swinging of dumb bells, and avoiding warm and small rooms, will be of considerable use in promoting the desired effect.

To young men in the country, if I do not interdict, I would by no means recommend the sports of the field ; they are not only unnecessary, and therefore injurious to him whose moments are all most precious, but have a very dangerous tendency. They are apt to fascinate too much, and in a little time that which at first was only used as a relaxation from study, will of itself become a study, and entirely divert the mind

from all attention to more serious considerations. This is then a most powerful reason why a student should beware of indulging in them. It will be quite as effectual to his purpose to substitute walking, leaping, running, wrestling, or any sport of this kind which his fancy may incline him to, as there is by no means that necessity for robust exertion in the country, where the air is pure and wholesome, and where a simple walk is fully equivalent to any exercise that could be made use of in the metropolis.

## CONCLUSION.

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IN the preceding pages I have given such directions as appear to me most likely to facilitate a young clerk's progress in his various studies ; but when I am reminded, that Milton and Locke have published erroneous opinions on the subject of education, it would be presumptuous in me to suppose that my work will be perfect. I hope, however, that the outline of my plan will be approved, though some of the minute parts may be liable to censure.

It may be thought, that I have endeavoured to ground the student on an impracticable basis ; and that the chapters on the study of the Law of Nature and Nations, and the English Constitution, might, with propriety, be left to those who are destined to fill the higher orders of the profes-

thoroughly investigated, there would not remain sufficient time for other more necessary employments.

I shall conclude by assuring the young Student, that if he attends to what has been herein written, he will certainly become a good lawyer, and, most probably, a successful one. But if, contrary to all expectation, he should not obtain extensive patronage, he will feel a laudable pride in having used his utmost endeavours to deserve it; which will be more satisfactory to an ingenuous mind, than the mere acquisition of wealth, or unjustly acquired popularity. “\* And I hope it will be written upon the tablets of his heart, in characters not to be effaced by ambition, avarice, or pleasure, that the only sure and certain happiness to be found on this side of the grave, is a consciousness of his own rectitude. All peace and homefelt joy is the gift of virtue; and there is no applause in this world worth having, unless it is crowned with our own.”<sup>17</sup>

\* Sir John Eardley Wilmot.

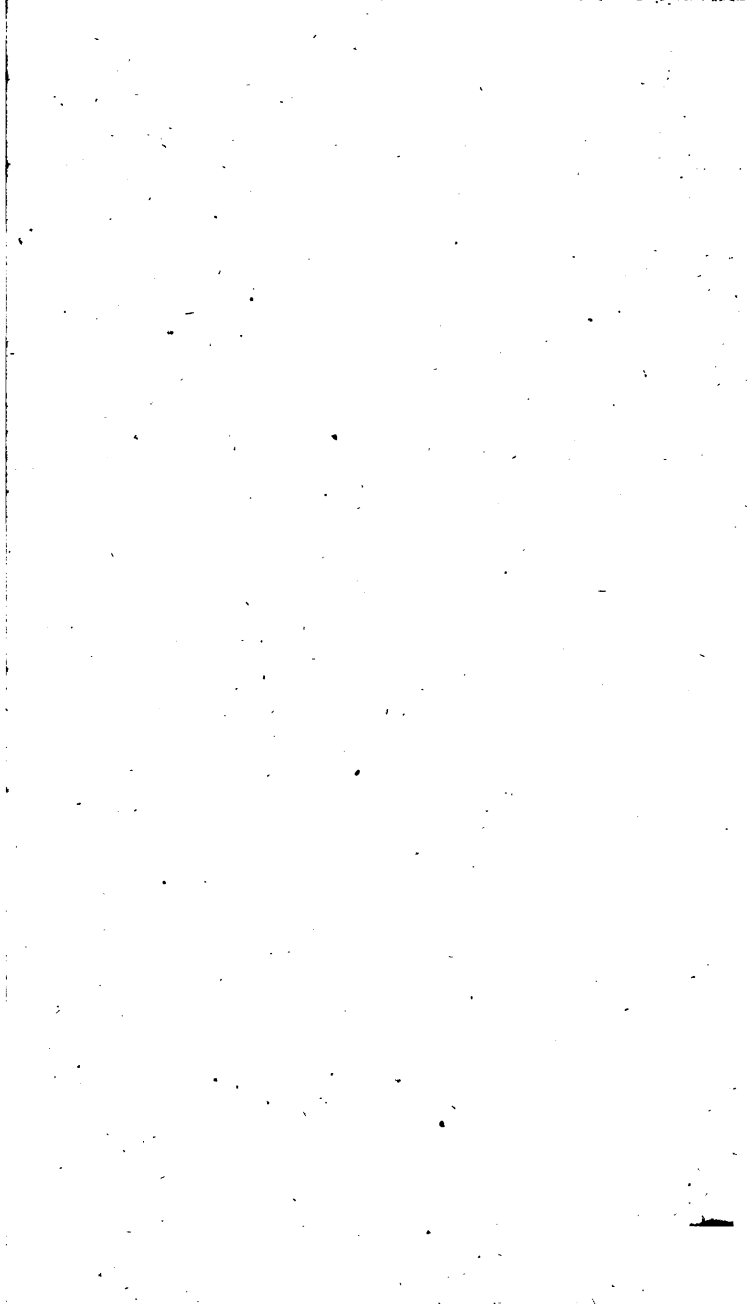
<sup>17</sup> On the subject of a general course of law reading, it is not necessary to designate the particular books or the



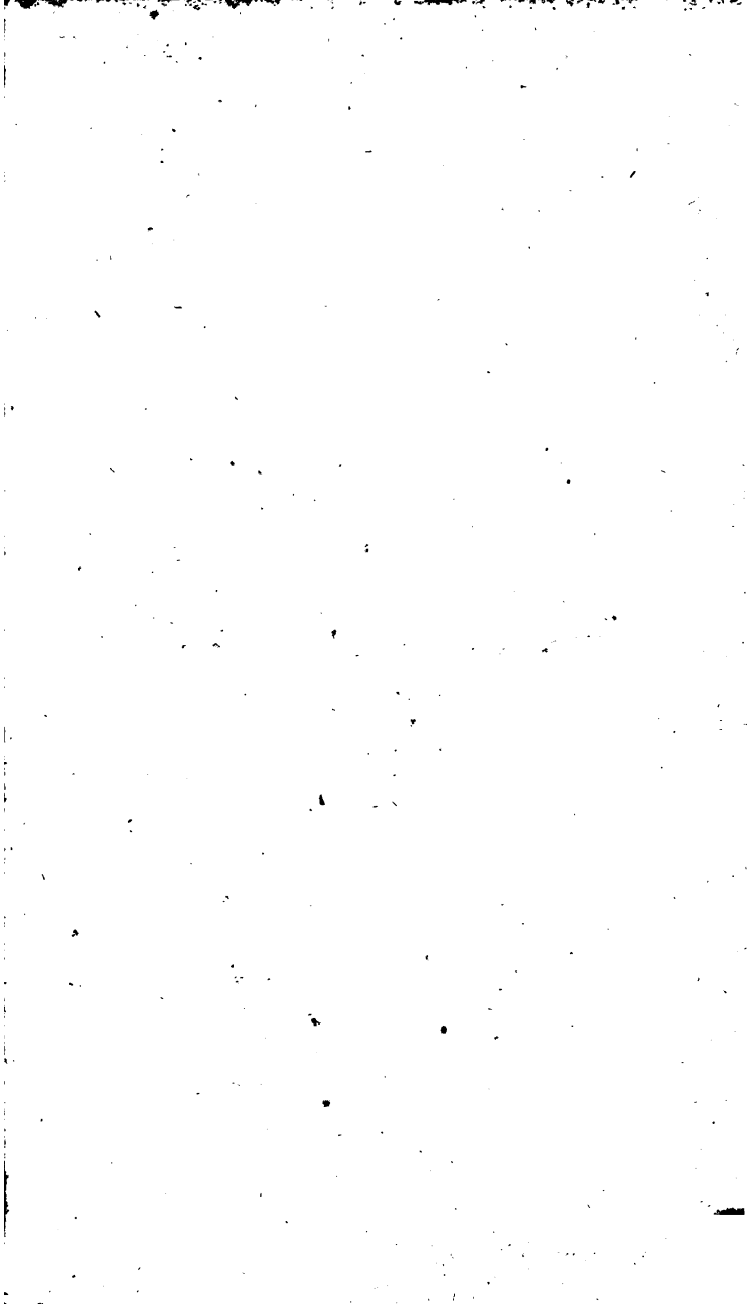
order of perusing them. The student should, by an attentive study of a few elementary authors, ground himself well in fundamental principles, and obtain a good general view of the whole system of law. But he should principally depend upon the Books of Reports, those judicial decisions and expositions of the law, from which elementary writers have compiled their works. In preparation for the reports, one or two of the best treatises upon *evidence* and *practice*, should be read.

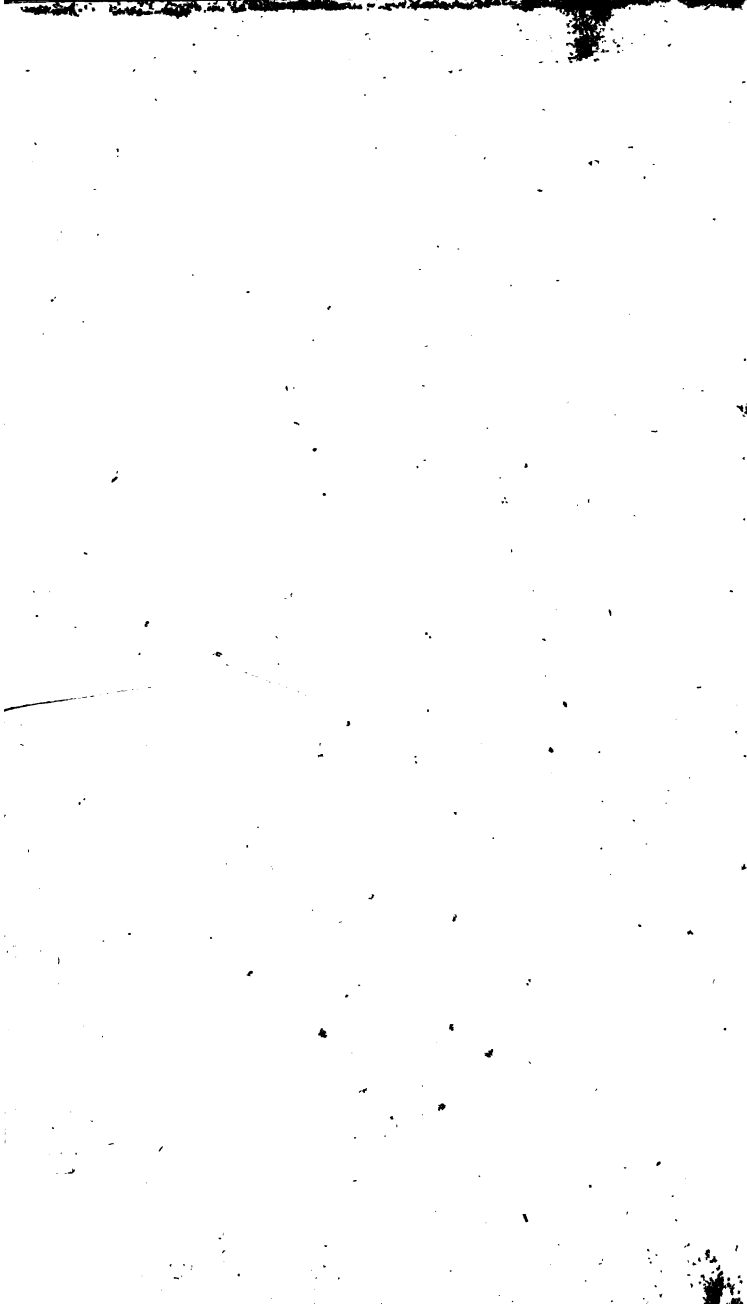












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